

**\_\_\_\_\_AGREEMENT**

**FOR VENDING CONCESSION SERVICES  
(SOFT DRINKS/BOTTLED WATER/SNACKS)**

**RFP**

**AT**

**HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT**

**Atlanta, Georgia**

**Landlord: City of Atlanta**

**Concessionaire: (\_\_\_\_\_)**

**Contract No. FC-(5210)**

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**AGREEMENT FOR VENDING CONCESSION SERVICES  
(SOFT DRINKS/BOTTLED WATER/SNACKS)**

**RFP**

**HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT**

This Concessions Agreement (the "Agreement") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Commencement Date"), between the City of Atlanta ("City") and \_\_\_\_\_ ("Concessionaire") who agree as follows:

**1. PREMISES:**

**1.1 Description of Premises:**

**1.1.1** Concessionaire shall be entitled to occupy and use, for the purposes set forth herein, the following premises ("Premises" hereinafter refer to the total square feet under this agreement on the Commencement Date) consisting of approximately 2,062 square feet on Concourses T, A, B, C, D, E, the Maynard H. Jackson, Jr. International Concourses (F), Atrium North Baggage Claim, and the Rental Car Center ("RCC") of Hartsfield-Jackson Atlanta International Airport (the "Airport"), and as further depicted in Exhibit A, as follows:

| <u>Space</u> | <u>Location</u>          | <u>Approximately Sq/Ft</u> |
|--------------|--------------------------|----------------------------|
| ATR-S18      | Atrium                   | 45                         |
| T-S1         | T Concourse              | 100                        |
| A-S3         | A Concourse              | 180                        |
| B-S2         | B Concourse              | 320                        |
| B-S3         | B Concourse              | 118                        |
| B-S4         | B Concourse              | 231                        |
| C-S2         | C Concourse              | 97                         |
| C-S3         | C Concourse              | 104                        |
| C-S4         | C Concourse              | 187                        |
| D-S3         | D Concourse              | 95                         |
| D-S4         | D Concourse              | 135                        |
| E-S9         | E Concourse              | 105                        |
| F-S2         | F Concourse              | 133                        |
| RCC-S1       | Rental Car Center        | 53                         |
| RCC-S2       | Rental Car Center        | 53                         |
| RCC-S3       | Rental Car Center        | 53                         |
| RCC-S4       | <u>Rental Car Center</u> | 53                         |
|              | <b>Total:</b>            | <b>2,062 sq. ft.</b>       |

**1.1.2** No easement for light, air or view is granted, given or implied in this Agreement. Upon completion of the construction contemplated by the Article entitled "Improvements", Concessionaire must submit to City a current, more detailed description based on final, as-built drawings, which will be incorporated by reference into this Agreement as a replacement for Exhibit A, without the need for the parties to formally amend this Agreement.

**1.2 Relocation, Expansion and Contraction; Reimbursement of Certain Costs:**

**1.2.1 City's Right to Require:** City may require that Concessionaire relocate all or part of the Premises within the Airport, or expand or contract the size of the Premises. Concessionaire must accomplish any such relocation, expansion or contraction expeditiously upon a timetable approved or directed by the Aviation General Manager.

**1.2.2 Reimbursements:**

**1.2.2.1** In the event the City requires Concessionaire to relocate all or part of the premises or contract the size of the premises, City agrees to reimburse Concessionaire for the reasonable unamortized construction costs for Concessionaire's improvements within such portion of the Premises affected (based on the current book value of furniture, fixtures and improvements using the straight-line method of depreciation), and moving costs due to relocation.

**1.2.2.2** The amount of reimbursed costs made by City pursuant to this Clause is at the City's sole determination. Proof of unamortized costs must be provided to and verified by the Aviation General Manager prior to reimbursement.

**1.2.2.3** City will amortize the construction and moving costs over the remaining term of the Agreement. This amortization may result in rental credits to future rental payments. No cash reimbursements or credits for any outstanding indebtedness will be provided by City as reimbursement for allowable construction and/or moving costs.

**1.2.2.4** Affect on Rental Payment Obligations in the Event of Expansion, Relocation and Contraction: Any such relocation, expansion or contraction required of Concessionaire under this Section may change Concessionaire's obligation to pay rent pursuant to the terms of the Agreement as follows:

**1.2.2.5** If the relocated Premises are deemed unsatisfactory by Concessionaire, then Concessionaire will have the right to terminate the Agreement with no further obligation on the part of either Concessionaire or City; except that City agrees to reimburse Concessionaire for the reasonable unamortized construction costs for Concessionaire improvements within the Premises (based on the current

book value of furniture, fixtures and improvements using the straight-line method of depreciation). Concessionaire must exercise its right to terminate by tendering written notice to City no later than thirty (30) days after Concessionaire receives notice from City of the required relocation, date of relocation and the location of the new Premises.

**1.2.2.6** If contraction of the Premises is required and the amount of contraction is greater than ten percent (10%) of the gross square footage of the Premises, then the Minimum Annual Guarantee (MAG) will be decreased in proportion to the amount of the percentage contraction of the gross square footage of the Premises. Contractions of the Premises are deemed cumulative in the aggregate and are to be compared with the area of the Premises as originally let by Concessionaire on the Commencement Date.

**1.2.2.6.1** For example, assuming the Premises of this Agreement on the Effective Date is one thousand (1,000) square feet. If, in contract year three (3), the City requires a contraction of the Premises to nine hundred fifty (950) square feet, the MAG related to the Premises will not be adjusted because the contraction is less than 10% of the original square footage. If, in contract year 4, the City requires a contraction of an additional one hundred (100) square feet, the MAG related to the Premises will be reduced by fifteen percent (15%) because the resulting Premises will have contracted by fifteen percent (15%), in the aggregate, as compared to the original square footage.

**1.2.2.7** If expansion of the Premises is required and the amount of expansion is greater than ten percent (10%) of the gross square footage of the Premises, then the Minimum Annual Guarantee (MAG) will be increased in proportion to the amount of the percentage expansion of the gross square footage of the Premises. Expansions of the Premises are deemed cumulative in the aggregate and are to be compared with the area of the Premises as originally let by Concessionaire on the Commencement Date.

**1.2.2.7.1** For example, assuming the Premises of this Agreement on the Effective Date is one thousand (1,000) square feet. If, in contract year three (3), the City requires an expansion of the Premises to one thousand fifty (1,050) square feet, the MAG related to the Premises will not be adjusted because the expansion is less than ten percent (10%) of the original square footage. If, in contract year four (4), the City requires an expansion of an additional one hundred (100) square feet, the MAG related to the Premises will be increased by fifteen percent (15%) because the resulting Premises will have expanded by fifteen percent (15%), in the aggregate, as compared to the original square footage.

**1.3. Atrium or RCC Closure:** From time to time, the atrium and/or RCC may be temporarily closed due to security restrictions. If the atrium and/or RCC in which any part of the Premises is located is permanently closed to passenger use,

upon such closure this Agreement will terminate as to the portion of the Premises on that concourse and City will reimburse Concessionaire for the reasonable unamortized construction costs for Concessionaire's improvements within the Premises (based on the current book value of furniture, fixtures and improvements using the straight-line method of depreciation). Upon such reimbursement to Concessionaire, title to all such furniture, fixtures and improvements will be deemed conveyed to City and Concessionaire may be required to execute such further documents and instruments to evidence such conveyance. Proof of unamortized costs must be provided to and verified by the Aviation General Manager prior to reimbursement.

**1.4. Support Space and Access:** Throughout the Airport there are certain spaces that may be available to Concessionaire for lease as support spaces for offices, storage, or other similar support uses. Concessionaire may request the use of a portion of such available additional space for purposes relating to the business conducted at the Premises. Such request must state the specific intended use of the space by the Concessionaire. If, in the Aviation General Manager's judgment, space is available for the purpose requested, such space may be provided to Concessionaire on a thirty (30) day revocable basis, at the then current rate charged by City for comparable space at the Airport. To memorialize the use of any such additional space, the parties will execute a temporary Permit outlining the terms of use. Such space may be unfinished and Concessionaire may, as a condition to using such space, have to develop and improve the space at its sole cost and without rental credit according to the terms and conditions contained in the Permit.

## **1.5. Deliveries:**

**1.5.1 Standard Delivery Policies:** Regular deliveries to the Premises and other spaces at the Airport used by Concessionaire under a Permit will be allowed during hours designated by the Aviation General Manager only and will be scheduled to minimize circulation conflicts with aircraft activity. Concessionaire is responsible for arranging for the delivery of all goods required for the operation of the business at the Premises. The Aviation General Manager must approve deliveries and delivery schedules.

**1.5.2 Exceptional Delivery Circumstances:** City acknowledges that certain exceptional circumstances may require variations from the designated hours for regular deliveries. Such deliveries will require the express prior written approval of the Aviation General Manager. Concessionaire is prohibited from using the RCC elevated Automated Guide Way Transit System or any of its moving sidewalks or in the transportation mall.

**1.5.3 Approval of Delivery Companies:** Only companies approved by the Aviation General Manager with required training, such as Airport security class and drivers' training, insurance, and security clearance will be authorized to make airside or landside deliveries at the Airport.

#### **1.5.4 City's Right to Use Third-Party Contractor:**

**1.5.4.1** The City may procure a third-party contractor to provide all receiving, handling and transfer/delivery services for all or any portion of the concessionaires operating at the Airport in accordance with policies the Aviation General Manager believes in his/her discretion to be in the best interests of the City.

**1.5.4.2** If the City chooses this option, it may direct that Concessionaire to exclusively utilize the services of such third-party contract for all receiving, handling and transfer/delivery services required by Concessionaire concerning the business it operates in the Premises. Concessionaire will be required to promptly pay all invoices provided to Concessionaire by such third-party contractor for receiving, handling and transfer/delivery services.

**1.5.4.3** Charges paid by Concessionaire for these services will be developed by the selected contractor based upon actual costs and will be subject to annual audit by the Aviation General Manager. It is anticipated that a flat rate will be developed and approved by the Aviation General Manager for these services according to concession category, frequency of deliveries, volume of goods delivered, amount of waste handled, etc. These charges are subject to change. Concessionaire should anticipate a charge of up to forty dollars (\$40) per square foot of the Premises and other spaces at the Airport used by Concessionaire under a Permit per year if a third-party contractor is used by the City and Concessionaire is directed to use such services.

## **2. TERM:**

**2.1 Commencement Date; Term:** The term ("Term") of this Agreement is seven (7) years from the Commencement Date at the end of which the Agreement will immediately and automatically terminate, unless renewed by the City of Atlanta pursuant to the Clause entitled "Renewals". All rights and obligations of the parties under this Agreement shall commence on the Commencement Date of the Agreement, except for, to the extent that City is unable to turn over possession of any part of the Premises to Concessionaire on the Commencement Date: (1.) the City's obligation to deliver such portion of the Premises to Concessionaire; (2.) Concessionaire's obligation to pay rent for such portion of the Premises; (3.) Concessionaire's obligation to improve such portion of the Premises; (4.) Concessionaire's obligation to operate such portion of the Premises. These four (4) specific obligations shall all commence on the date the City makes such portion(s) of the Premises available to the Concessionaire.

- 2.2 Renewals:** This Agreement is subject to a one (1) three (3) year renewal at the sole option of the City. Notice of the City's intention to renew the Agreement will be provided to Concessionaire within thirty (30) days of the end of the fifth anniversary of the Commencement Date. The renewal shall require the approval of the City Council and, if granted, will require the execution of an appropriate Renewal
- 2.3 Holding Over:** If Concessionaire remains in possession of the Premises after the expiration of the Term, or any renewals, without written permission from the City, such holding over will not be deemed to operate as a renewal or extension of this Agreement, nor will it create a tenancy at will. Such holding over will create a month-to-month tenancy at a monthly rate equal to twice the monthly rate existing during the last month of the Term or the renewal period. During such month-to-month tenancy, the terms of this Agreement will continue to govern the relationship of the Parties.

**3. Permitted USE:**

- 3.1 Non Exclusive:** Concessionaire will have the non-exclusive rights to provide vending concession services – (soft drinks/bottled water/snacks) on the Premises.
- 3.2 Use of Premises:** Concessionaire must use the Premises to sell the following goods, items, services or commodities: (RFP Part 1, Exhibit A)

*\*TBD\**

**3.3 [RESERVED]**

- 3.4 Pricing:** Concessionaire must submit all of its proposed prices to the Aviation General Manager for review at least thirty (30) days prior to Concessionaire offering its services to the public. Concessionaire may not charge any prices that have not been approved in writing by the Aviation General Manager, once Concessionaire's initial proposed prices are approved in writing. Concessionaire must submit any proposed price changes to the Aviation General Manager for approval prior to implementation.

**3.4.1 Street Plus 10% Pricing:** To determine Street Plus ten percent (10%) Prices, the Aviation General Manager may, at any time, conduct a Market Basket Pricing Survey. This survey shall consist of at least three (3) and up to six (6) Greater Atlanta area same location or similar locations where residents, travelers or visitors normally shop. Concessionaire's price on any specific item may not exceed the average price of those locations plus an additional ten percent (10%).



The Aviation General Manager has the sole discretion to determine whether a price is reasonable.

**3.4.2 Same Store Pricing:** For any operations where Concessionaire currently operates the same or similar vending services concession- soft drink/bottled water/snacks location in the Metropolitan Atlanta area, Concessionaire may not charge higher prices at the Airport for like or similar items. The Aviation General Manager has the right to survey prices at those stores and to use these prices for same or similar items as the primary basis for pricing in the Premises. If the same brand does not exist in Metropolitan Atlanta area, the Concessionaire shall charge Street Plus ten percent (10%) Price.

**3.5 Continuous Operation of Premises:** Concessionaire must operate the Premises uninterrupted, throughout the Term, including renewals, and provide all required services, to the extent permitted by law and provided that Concessionaire is lawfully entitled to possession of the Premises.

**3.6 Hours of Operation:** Premises must be open three hundred sixty five (365) days a year, twenty-four (24) hours a day, seven (7) days a week.

**3.6.1** The Hours of Operation will be posted on each vending concession services - soft drinks/bottled water/snacks location in a format approved by Aviation General Manager. Concessionaire may be required to keep its machines available for additional hours, including around the clock, with very limited notice, at the direction of the Aviation General Manager under circumstances warranting such additional hours, as determined by the Aviation General Manager in his/her discretion.

**3.7 Customer Service:**

**3.7.1** The Aviation General Manager shall have the right to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged and the appearance and condition of the Premises. Concessionaire agrees to promptly discontinue or remedy any objectionable practice. Concessionaire must also comply with the Concessions Compliance Standards established by the Aviation General Manager. The Concessions Compliance Standards can be located on the Airport's website ([www.atlanta-airport.com](http://www.atlanta-airport.com)).

**3.7.2 Customer Service Quality Assurance and Mystery Shopper Standards:** The City's mission is to operate the World's Best Airport by Exceeding Customer Expectations. Well-defined and highly effective customer service programs are expected from all concessionaires. All Concessionaires will undergo scheduled and unscheduled monthly quality assurance audits in order to ensure optimal

customer service performance. Basic standards of customer service include and are not limited to the following: promptly greeting the customer with a smile; making eye contact; being friendly and knowledgeable about the Airport; listening and responding politely; presenting a receipt and the correct change to the customer; and thanking the customer with a smile. In addition, the Concessionaire must understand and agree that its operation at the Airport necessitates the rendering of the following passenger services: making reasonable change; offering passenger directions and assistance; and accepting four (4) major credit cards (Visa, MasterCard, Discover, and American Express) as payment for any debit or credit transaction. Further, the DOA highly encourages and may ultimately require the implementation of expedited payment options, which may include but is not limited to MasterCard PayPass® technology as well as "Mystery Shopper Services" to ensure consistent performance.

The DOA requires Concessionaire and its staff to attend customer service training and all other such classes at the Concessionaire's expense, and/or as directed by the Aviation General Manager or his or her designee. All training as provided by the Concessionaire to its associates must comply with the Airport's compliance standards of customer service. The cost associated with such additional training is the sole responsibility of Concessionaire.

The Airport believes that a high quality and stable work force is key to providing outstanding customer service. The City is seeking organizations that are "employers of choice". Concessionaire is expected to maintain a positive work environment that encourages the development and growth of all employees. Concessionaire is expected to maintain favorable turnover rates compared to like businesses in the industry. Failure to do so may result in non-renewal or termination of this Agreement.

Concessionaire's staff must be aware of the time sensitive nature of Airport patrons. All of Concessionaire's employees shall be courteous and helpful to the public.

Concessionaire shall conduct its operation in a businesslike manner. A sufficient quantity of inventory must be carried to ensure that the premises will be fully stocked and available to passengers at all times. All inventories must be top quality and displayed in an "opening day fresh" manner. In addition a dress code should be strictly adhered to for all operating staff.

Concessionaire agrees to offer "take out" packaging to enable customers to more easily transport items through the Airport. Environmentally friendly and/or innovative packaging or transportation devices that facilitate travel are highly encouraged.

**3.8 Prohibition of Solicitation:** Concessionaire is strictly prohibited from engaging in any activities outside the Premises within the Airport for the

recruitment or solicitation of business. Concessionaire may not place or install any carts, kiosks, inline store, racks, stands, and display merchandise or trade fixtures outside the boundaries of the Premises without the express written consent of the Aviation General Manager.

**3.9 Representative of Concessionaire:** Concessionaire must, at all reasonable times, retain in the Airport at least one (1) qualified representative, authorized to represent and act for it in matters pertaining to this Agreement and its operations at the Airport and must keep the Aviation General Manager informed in writing of the identity of each such person.

**3.10 Investigation Reports:** Concessionaire must, if required in writing by the Aviation General Manager, employ, at its own cost and expense, an investigative organization approved by the Aviation General Manager for the purpose of making investigations and observations and preparing a written report on the carrying out of any pricing policies, revenue control and operational techniques being used at the Premises. Concessionaire must cause such investigation and observation to be made at reasonable times and in the manner set forth in the Aviation General Manager's written directive to Concessionaire, and the investigator must deliver to the Aviation General Manager a true and complete written copy of any such report made to Concessionaire within the timeframe designated by the Aviation General Manager.

**3.11 Ingress and Egress; Security Regulations:** Concessionaire possesses the right of ingress to and egress from the Airport as may be necessary to fulfill its obligations under this Agreement, subject to Airport rules and regulations, and agrees that the exercise of such right must not impede or interfere unduly with the operation of the Airport by City, its Concessionaires, contractors, airline passengers, the public or other authorized occupants. Concessionaire agrees that its rights under this Agreement are subject to all security regulations or restrictions that may exist or come into existence and be imposed by any governmental entity having jurisdiction over the Airport and security matters pertaining to it. Concessionaire will have no claim for relief of rent or other remedies as a result of the imposition of such security regulations, other than as specifically identified in the Section entitled "Reduction in Rent Due to Change in Enplanements".

**3.12 Reservations by City:**

**3.12.1** City has the right, without any obligation to do so, at any reasonable time and as often as it considers necessary:

**3.12.1.1** to inspect any portion of the Premises;

**3.12.1.2** to enter the Premises and make ordinary repairs;

**3.12.1.3** to take such action in the event of an emergency concerning the Premises as may be required for the protection of persons or property. In the event the need to take such emergency action is caused by acts or omissions of Concessionaire, Concessionaire will reimburse City for the City's costs associated with such emergency actions. Further, Concessionaire must assure City of emergency access to the Premises by providing emergency telephone numbers at which Concessionaire's representative(s) may be reached on twenty-four (24)-hour basis.

**3.13 Compliance with Laws and Regulations; Licenses and Permits:**

**3.13.1** Concessionaire must at all times during the Term and any renewal term comply with all the applicable federal and state laws, local ordinances, codes, rules and regulations respecting Concessionaire's use and occupation of the Premises issued by any governmental entity having jurisdiction over the Airport, including, but not limited the City and the Aviation General Manager.

**3.13.2** Concessionaire shall be solely responsible for the cost of obtaining and maintaining all licenses and permits necessary to operate at the Airport and perform all required services.

**3.14 Prohibited Uses:** The Premises may not be used except for the purposes specified in the Clause entitled "Use". Concessionaire may not do, or cause or permit anything to be done in or about the Premises, or bring or keep anything on the Premises:

**3.14.1** increasing in any way the rate of fire insurance or other insurance applicable to the Airport or its concourses, or any of its contents; or

**3.14.2** creating a nuisance; or

**3.14.3** in any way obstructing or interfering with the rights of others in the Airport, or injuring or annoying them; or

**3.14.4** allowing any sale by auction on the Premises; or

**3.14.5** committing any waste upon the Premises; or

**3.14.6** using or allowing the Premises to be used for any improper, immoral, unlawful or objectionable purpose; or

**3.14.7** placing any loads upon the floor, walls or ceiling which endanger the structure; or

**3.14.8** obstructing the sidewalk, passageways, stairways or escalators in front of, within or adjacent to the Airport, its concourses or other facilities; or

**3.14.9** doing or permitting to be done anything in any way tending to injure the reputation of City or the appearance of the Airport, its concourses or other facilities.

- 3.15 Trash Removal:** All waste matter must be stored and disposed of in a manner satisfactory to the Aviation General Manager, and Concessionaire agrees to arrange for the timely disposal of all waste material at its own expense. Concessionaire will be responsible for the removal of Concessionaire's trash from the Premises and transfer to designated waste receptacles. Concessionaire will be billed for all costs associated with trash removal from designated waste receptacles.

#### **4. ASSIGNMENT OR SUBLETTING:**

- 4.1** Concessionaire may not assign, transfer or encumber its interest in this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part, without the prior written consent of City. Furthermore, Concessionaire may not sublet or encumber the Premises, or any part of it, without the prior written consent of City. Any attempted assignment, transfer, encumbrance or sublease without the prior written consent of City is voidable at City's election.
- 4.2** If Concessionaire is a partnership or joint venture, a withdrawal or change (whether voluntary, involuntary or by operation of law) of the partner/joint venture or partners/joint ventures owning more than fifty percent (50%) (as measured by interests in capital, profits or such other measurement as City may reasonably designate) of the partnership/joint venture, or the dissolution of the partnership/joint venture, will be deemed an assignment subject to this Clause.

- 4.3** If Concessionaire is a corporation, any dissolution, merger, consolidation or other reorganization of Concessionaire, or the sale or other transfer of a controlling percentage of the capital stock of Concessionaire, or the sale of more than fifty percent (50%) of the value of the assets of Concessionaire, will be deemed an assignment subject to this Clause. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Concessionaire's capital stock issued, outstanding and entitled to vote for the election of directors. This paragraph will not apply to corporations the stock of which is traded through an exchange or over the counter.

**5. RENTAL PAYMENTS:**

**5.1 Rental Payments:**

**5.1.1** The total rental payment for the first year of this Agreement is the greater of Concessionaire's Minimum Annual Guarantee ("MAG") of \$\_\_\_\_ or \_\_\_\_ percent (%\_\_\_\_) of concessionaires gross receipts as provided in the following schedule over the first year percent ("Percentage Rent").

**5.1.1.1** In each subsequent year during the Term of this Agreement (including any years during a renewal Term) the MAG for the applicable year will be adjusted to equal the higher of (1.) the previous year's MAG; or (2.) eighty-five percent (85%) of the total rent owed by Concessionaire during the previous year.

**5.1.2** Rent to be paid each month under this Agreement will be the higher of one twelfth (1/12<sup>th</sup>) of the Minimum Annual Guarantee or Percentage Rent (Percentage of Gross Receipts per Category as outlined in Section 3. "Scope of Services" of the RFP).

**5.1.3** The term "Gross Receipts" shall include and/or all monies paid or payable to Concessionaire or concessionaire's subconcessionaire for sales made or services rendered at or from the Airport, regardless of when, where, or whether the business transaction occurs on or off of the Airport property as well as any other revenues of any type arising out of or in connection with Concessionaire's operations at the Airport, provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by Concessionaire shall be excluded.

**5.1.4** Rent will be paid monthly in advance, beginning on the Commencement Date (as defined in Section 2.1). Concessionaire will pay one-twelfth (1/12<sup>th</sup>) of the MAG on the first day of each month. By the 10th day of each month, Concessionaire will submit a report, in a form provided by the Department of

Aviation, of actual Gross Receipts received during the previous month along with the calculation of Percentage Rent for such previous month is greater than the previously paid MAG and a check representing the additional rent owed to it as a result of such Percentage Rent calculation.

**5.1.4.1** Annual Rent for each contract year will be trued up in the first quarter of the following contract year. Any overpayments will be reimbursed in the following year through rent credits.

**5.1.5** Minimum Annual Guarantee rental paid after the tenth (10<sup>th</sup>) of the month and Percentage Rent paid after the twenty-fifth (25<sup>th</sup>) day of the following month will be deemed a late payment and shall incur interest as additional rent at the rate of one tenth (1/10<sup>th</sup>) of one percent (0.1%) compounded daily from the date due until the date received by the City.

#### **5.1.6 Method of Payment:**

**5.1.6.1** Rental for a portion of a month shall be prorated, if applicable. Rental payments shall be made in lawful money of the United States, free from all claims, demands, set-offs or counterclaims of any kind against City. All rental payments shall be payable at:

**ATTN: City of Atlanta  
Department of Aviation  
P.O. Box 920500  
Atlanta, Georgia 30392**

**5.1.6.2** City may require payment at such other place as the Aviation General Manager may from time to time designate to Concessionaire in writing.

**5.1.6.3** No payment by Concessionaire or receipt by City of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction. City may accept such check or payment without prejudice to City's right to recover the balance or to pursue any other remedy in this Agreement or otherwise provided by applicable law or equity.

#### **5.2 Books and Records:**

**5.2.1** Concessionaire must maintain throughout the Term of this Agreement and for a three (3) year period after the Term, including renewals, or, in the event of a claim by City, until such claim of City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate, daily records of Gross

Revenues from all activity conducted under this Agreement in accordance with generally accepted accounting principles, showing in detail all business on or transacted in, about, from or pertaining to the Premises, and Concessionaire must enter all receipts arising from such business in regular books of account, and all entries in any such records shall be made at or about the time the transactions occur.

**5.2.2** In addition, Concessionaire shall maintain weekly, monthly and annual reports of Gross Revenues and transactions derived from its operations under this Agreement, using a form and method as directed by the Aviation General Manager. Concessionaire, throughout the Term, shall employ such forms and methods. Upon the Aviation General Manager's written request, Concessionaire must make available immediately at the Airport, for inspection and copying by the Aviation General Manager or his or her designated representative, any and all books, records and accounts pertaining to its operations or performance of its obligations under this Agreement. The intent and purpose of the provisions of this Section are that Concessionaire must keep and maintain records which will enable City to ascertain, determine and audits, if so desired by City, clearly and accurately, with its obligation under this Agreement and the share of Gross Revenues received by City, and that the form and method of Concessionaire's reporting of Gross Revenue will be adequate to provide a control and test check of all Gross Revenue derived by Concessionaire under this Agreement.

**5.2.3** Should any examination, inspection or audit of Concessionaire's books and records by City disclose an underpayment by Concessionaire in excess of two percent (2%) of the total annual consideration due, Concessionaire must promptly pay City the amount of such underpayment, plus interest thereon at the rate of one and one half percent (1.5%) per month, from the date due until the date collected, and shall reimburse City for all costs incurred in the conduct of such examination, inspection, or audit. If City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection or audit, then Concessionaire must reimburse City for reasonable attorneys' fees and litigation expenses as part of the costs incurred.

**5.2.4** Not later than ninety (90) days after each annual anniversary of the Commencement Date, Concessionaire must furnish to the Aviation General Manager an unqualified report, certified by a Certified Public Accountant ("CPA") of the Gross Revenues. Concessionaire must also furnish the Aviation General Manager with such other financial or statistical reports as the Aviation General Manager from time to time may request.

**5.2.5** Upon request by the Aviation General Manager, Concessionaire must furnish to City copies of its quarterly State of Georgia sales and use tax returns



covering the Premises as well as Concessionaire's Georgia and federal income tax returns at the time of filing, and any amendments. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant (CPA). Concessionaires shall also promptly notify the Aviation General Manager of and furnish to City copies of any audit reports covering the Premises conducted by the Department of Revenue of the State of Georgia or the Internal Revenue Service. All of the books, records and accounts required by this Section to be maintained by Concessionaire, or true and complete copies of them, shall be maintained by Concessionaire in the greater Atlanta area.

### **5.3 Revenue Control:**

**5.3.1** All business transactions, which occur in the Premises, must be completed by a register transaction and a receipt must be offered to each customer. However, during the Term of the Agreement, the City reserves the right, at its expense, to purchase and/or implement a computerized point of sale system ("POS") and to further modify the system from time to time. Concessionaire must cooperate fully in the development and implementation of such a system. Upon implementation, the Aviation General Manager may dictate a new method of collection and payment by providing written notice to Concessionaire. Concessionaire must cooperate with the City in implementing such modified collection procedures. If the new POS system requires replacement of existing cash registers within the Premises, the City will reimburse Concessionaire for the unamortized cost thereof (based on the then current book value, using the straight-line method of depreciation) less the salvage value of such cash registers. The City will determine the type of registers to be used in the newly implemented POS system.

**5.3.2** City will determine the type of registers to be used in the newly implemented point of sale system. In order to facilitate implementation of the point of sale system, all cash registers used in the operation of businesses within the Premises must have, at a minimum, the features outlined below:

**5.3.2.1** A minimum of sixty (60) segregated sales categories;

**5.3.2.2** The input device may either be a keyboard, scanner, touch screen, or other approved input technology or combination of the thereof;

**5.3.2.3** The patron fee display shall be of sufficient size and legibility to be readily observed by the patron during the processing of the transaction;

**5.3.2.4** The POS register, terminal, or POS control server(s) shall be capable of secure, encrypted data transmission using the TCP/IP or RS-232 communications protocol; and

**5.3.2.5** The register or data collection device shall have a secure transaction audit tape or a detail digital ASCII transaction journal log file stored on a USB (flash) drive or other suitable media.

**5.3.2.6** Concessionaire must also comply and remain current with all Payment Card Industry Data Security Standard (PCI-DSS) requirements as detailed at [https://www.pcisecuritystandards.org/security\\_standards/pci\\_dss.shtml](https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml).

**6. TAXES AND LIENS:** Concessionaire is liable for all taxes levied or assessed against any interest of Concessionaire in the Premises and any personal property, furniture or fixtures placed by Concessionaire in the Premises. Concessionaire agrees not to permit or suffer any liens to be imposed upon the Premises, the Airport or any other part of them as a result of its activities without promptly discharging them, provided, however, that Concessionaire may, if Concessionaire so desires, contest the legality of any such liens. In the event of a contest, Concessionaire must provide a bond in an amount and form acceptable to City in order to clear the record of any such liens.

## **7. IMPROVEMENTS:**

### **7.1 Approval of Conceptual Design:**

**7.1.1** The initial layout and design of all Concessionaire Improvements to be made or installed within the Premises and any subsequent refurbishments shall conform to the Department of Aviation Airport Design Criteria (the "Airport Design Criteria") which shall be made available to Concessionaire upon the Airport's website ([www.atlanta-airport.com](http://www.atlanta-airport.com)) and shall be subject to change from time to time by the Aviation General Manager.

**7.1.2** Prior to the commencement of initial construction, or subsequent refurbishment of, or other work with respect to Concessionaire Improvements, Concessionaire must submit detailed plans and specifications to the Aviation General Manager for approval. Concessionaire must include with its plans and specifications schematic renderings of the Premises, materials, a color board or boards and a detailed layout of the overall merchandising plan. Approval by City will extend to and include architectural and aesthetic matters and City reserves the right to reject any designs submitted and to require Concessionaire to resubmit designs and layout proposals until they meet City's approval. The

Commencement Date shall not be extended if City elects to reject any designs or layout Proposals submitted. If City and Concessionaire fail to agree on plans and specifications for Concessionaire Improvements within thirty (30) days after the Commencement Date Agreement, City may terminate this Agreement.

**7.1.3** In the event of disapproval by City of any portion of the plans and specifications, Concessionaire will promptly submit necessary modifications and revisions. Concessionaire will make no changes or alterations in the plans or specifications after approval, and no structural alterations or improvements will be made to or upon the Premises without the prior written approval of the Aviation General Manager. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in the plans or specifications. One copy of plans and specifications for all Concessionaire Improvements or subsequent changes or alterations will, within fifteen (15) days after approval by the Aviation General Manager, be signed by Concessionaire and delivered to the City.

## **7.2 Minimum Investment; Base Building Improvements; Reinvestment:**

### **7.2.1 Minimum Investment:**

**7.2.1.1** Within the Premises defined by demising partitions and/or other boundaries described in the Agreement, Concessionaire shall perform all demolition required and shall at its own expense construct all improvements and install all trade fixtures according to the procedures and standards specified in the Airport Design Criteria.

**7.2.1.2** Within thirty (30) days of receiving a Certificate of Occupancy, Concessionaire is required to submit to the Aviation General Manager as-built drawings.

**7.2.1.3** Within one hundred fifty (150) days of the Commencement Date, or otherwise pursuant to a Transition Plan approved by the Aviation General Manager, Concessionaire shall construct, decorate and finish to professional Retail concessions standards the interior and exterior of the Premises. The design and theme must be submitted to the Aviation General Manager, and he/she must approve them prior to implementation. The public visible area of the Premises shall be improved at a Minimum Investment of three hundred fifty dollars (\$350.00) per square foot. In addition, Concessionaire is responsible for demolition necessary to accommodate all improvements. The three hundred fifty dollars (\$350.00) Minimum Investment calculation shall include all construction costs, mechanical, electrical and plumbing (whether in areas visible to the public or not), finishes, furnishings, furniture, casework, or

other fixtures, signs, store fronts, as well as all architectural and engineering fees.

**7.2.1.4** Within thirty (30) days of receiving a certificate of occupancy, Concessionaire shall provide the City a statement certified by its architect, setting forth the total construction costs, with appropriate detail showing the costs and useful lives of elements of decoration, furnishings or fixtures. Concessionaire shall make available to Aviation General Manager paid invoices for labor and materials covering all construction and trade fixtures, including furniture, fixtures and architectural and engineering fees. The three hundred fifty dollars (\$350.00) Minimum Investment may not include financial costs, interest, inventory, pre-opening expenses or intra-company charges related to construction. If the actual Investment cost incurred by the Concessionaire is less than the Minimum Investment required, in addition to any other remedy available to the City, Concessionaire will pay the difference to City within sixty (60) days after receipt of Certificate of Occupancy. If the City disputes the amount of investment claimed by Concessionaire, the City may, at its expense, hire an independent appraiser to determine the cost of the investment. If the independent appraiser determines that the investment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

**7.2.1.5** Notwithstanding the work to be performed pursuant to this Section Concessionaire shall begin paying rent on the Commencement Date, and Concessionaire must document any and all costs of Improvements made to the Premises subsequent to the Commencement Date. The documentation must be in a form and detail satisfactory to the Aviation General Manager, and must be submitted for review and approval within thirty (30) calendar days following completion of the work, for the purpose of establishing the unamortized costs of improvements to be reimbursed to Concessionaire in the event of termination for convenience by the City.

**7.2.2 Base Building Improvements:** Concessionaire shall pay all costs for required modifications and/or construction of certain base building conditions necessary to bring the base building concession spaces to a condition ready to receive Concessionaire Space Improvements. Improvements shall include but not be limited to the following: demolition of existing storefronts and finishes and removal of debris, construction or relocation of demising partitions, construction of servicing/delivery corridors or other support spaces, and extension or modification of building systems or other work. In locations in which construction of service corridors will be necessary to improve operations at the Airport, the required corridors shall be constructed by the Concessionaire.

**7.2.3 Minimum Reinvestment:** As provided in the Section entitled "Renewals", this Agreement shall be subject to a single three (3) year renewal at the option of the City. If the renewal option is exercised, the City will notify the Concessionaire of its intention to renew within thirty (30) days of the fifth (5<sup>th</sup>) anniversary of the Commencement Date. In such case, Concessionaire will be required to refurbish the public areas of the Premises at a minimum cost of three hundred dollars (\$300.00) per square foot within one hundred twenty (120) days of the execution of the Renewal or within such longer time period as may be approved by the Aviation General Manager. In the event this Agreement is not renewed, Concessionaire will be required to refurbish the public areas of their Premises at a minimum investment of one hundred dollars (\$100) per square foot by the earlier occurring of: (1) One hundred twenty (120) days after the fifth (5<sup>th</sup>) anniversary of the Commencement Date; or (2) One hundred twenty (120) days from the date the City notifies Concessionaire in writing that the Agreement will not be renewed. If the City disputes the amount of reinvestment claimed by Concessionaire, the City may, at its expense, hire an independent appraiser to determine the cost of the reinvestment. If the independent appraiser determines that the reinvestment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

**7.2.4 Liquidated Damages:** Failure by Concessionaire to complete the construction in the timeframe as outlined in section 7.2.1.3 during the term shall result in the payment of liquidated damages of one thousand dollars (\$5, 000) per location per day, which shall be in addition to the payment of the required Rent and which the parties acknowledge is a reasonable estimate of the estimate of the damage incurred by the City for such delay. Failure by the Concessionaire to complete the construction in the timeframe as outlined in Section 7.2.3 as required during the renewal shall result in the payment of liquidated damages of one thousand dollars (\$3, 000) per location per day, which shall be in addition to the payment of the required Rent and which the parties acknowledge is a reasonable estimate of the damage incurred by the City for such delay.

### **7.3 Construction of Concessionaire Improvements:**

**7.3.1** Concessionaire must, at its sole cost and expense, design, erect, construct and install all of the following ("Concessionaire Improvements"): fixtures, furnishings, carpeting, decorations, finishings, equipment, counters, and all other improvements for the operation of business within the Premises pursuant to this Agreement.

**7.3.2** Concessionaire must perform all demolition required and construct and install all Concessionaire Improvements at its own expense and shall hire contractors that are acceptable to City. Prior to the commencement of any construction work, Concessionaire must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Concessionaire must provide to City, a payment and performance bond in an amount equal to one hundred percent (100%) of the total contract value of such contract. Concessionaire must also comply with all other requirements of Appendix B.

**7.3.3** City's sole responsibility with regard to improvements within the Premises shall be to deliver the Premises to Concessionaire in the condition set forth in the Airport Design Criteria. Concessionaire may not undertake any work within or about the Premises unless City, pursuant to the Airport Design Criteria, requires such work. Prior to the commencement of any work, Concessionaire must confirm to the Aviation General Manager in writing that: (1.) Concessionaire accepts the Premises for the intended uses; and (2.) the Premises are in the condition set forth in the Airport Design Criteria.

**7.3.4** All aspects of Concourse F concessions build-out must:

7.3.4.1 comply with the Silver Leadership in Energy and Environmental Design (LEED) Certification; and

7.3.4.2 comply with Appendices D and E attached.

## **7.4 Utilities:**

**7.4.1 Utility Connections:** The City will provide the source for certain utility connections for the concession spaces as specified in the Airport Design Criteria. Generally, electrical service will be provided to each concession's rear or side demising wall and stubbed off. Connection and distribution throughout the concession space shall be at the Concessionaire's expense. All utilities to the concession space will be separately metered.

**7.4.2** Concessionaire must pay the whole cost for all utility services as invoiced to Concessionaire by the Airport or its designee and for such other special services which it may require in the Premises, and Concessionaire expressly waives the right to contest any utility rates; provided that Concessionaire will not be charged for the supply of heat, ventilation, and air conditioning for the Premises.

**7.4.3 Heating, Ventilation and Air Conditioning ("HVAC"):** The City will provide the base system for HVAC. However, Concessionaire will be required to install separate equipment for HVAC requirements specifically

related to Concessionaire's operations. In such event, Concessionaire will pay for utility usage in the concession spaces for HVAC requirements. Concessionaire will pay for all utilities without exception necessary in the operation of its business including telephone, electricity, water, sewage, gas and other fuels. All charges including but not limited to deposits and all service charges for utility services metered directly to the concession space must be paid by Concessionaire, regardless of whether such utility services are furnished by the City or other utility service corporations.

**7.5 Waiver of Damage:** Concessionaire expressly waives all claims for damages arising out of or resulting from failures or interruptions of utility services furnished by City including, but not limited to, electricity, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences.

**7.6 Maintenance and Repair:** Concessionaire agrees, at its own expense, to keep the Premises and all Concessionaire Improvements in good repair and in a clean, neat, safe and sanitary condition and in good order at all times. If it becomes reasonably necessary during the Term of this Agreement, as determined by the Aviation General Manager, Concessionaire will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Additionally, Concessionaire shall pay its pro rata share of Airport Operations and Maintenance ("O&M") costs to be billed monthly by the City or its designee.

**7.6.1 Janitorial Service:** Concessionaire will provide sufficient janitorial services to ensure that the Premises is at all times maintained in a clean attractive and sanitary manner including, but not limited to, equipment, utensils, fixtures, grease traps, service counters and display units.

**7.6.2 Pest Control:** At any time during the Term of this Agreement, the Aviation General Manager may require Concessionaire to use the pest-exterminating contractor engaged by the Airport to implement a comprehensive, ongoing pest control program. In such case, Concessionaire shall be required to provide the City with reports indicating compliance with pest control standards, in such form as the Aviation General Manager may dictate from time to time and shall be required to maintain manifest reports on file at each store, at all times.

**7.7 Advertising:** Concessionaire may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of the Aviation General Manager as to the number, size, height, location, color and the general type and design. Such approval shall be subject to revocation by the Aviation General Manager at any time. Without express written consent of the Aviation General Manager, Concessionaire may not display

any advertising, promotional or informational pamphlets, circulars, brochures or similar materials.

## **8. LIABILITY AND INDEMNITY:**

**8.1 City's Liabilities:** City will not be liable or responsible to Concessionaire for any loss (es), damage(s) or expense(s) that Concessionaire may sustain or incur if either the quantity or character of any services to be provided by City is changed or is no longer available or is no longer suitable for Concessionaire's requirements. City will not be liable or responsible to Concessionaire for any loss (es), damage(s) or expense(s) arising out of, resulting from, relating to or concerning, directly or indirectly, acts of terrorism, including, but not limited to, loss (es), damage(s) or expense(s) sustained or incurred by Concessionaire as a result of:

**8.1.1** a change in the Airport's or Concessionaire's business resulting from such terrorist acts;

**8.1.2** the enactment of laws responding to or concerning such terrorist acts; or

**8.1.3** any other detrimental effect upon Concessionaire or its business resulting from such terrorist acts.

**8.2 Indemnity and Hold Harmless:** Concessionaire agrees to defend, indemnify and hold harmless City, its officers, agents, officials and employees (collectively, "Indemnified Parties") from and against:

**8.2.1** all liability for injuries to or deaths of persons or damage to property arising from Concessionaire's activities under this Agreement or in or about the Premises; and

**8.2.2** all loss(es), expense(s), demand(s), suit(s) and claim(s) against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to the negligence or willful misconduct of Concessionaire or any other individual or entity under Concessionaire's control (contractual or otherwise) and their officers, agents or employees; and

**8.2.3** all loss(es), expense(s), demand(s), suit(s) and claim(s) against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to any liens and charges of any kind that may at any time be established against the Premises or this Agreement, or any part of it, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Agreement; and



**8.2.4** all loss(es), expense(s), demand(s), suit(s) and claim(s) against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to Concessionaire's violation or alleged violation of the Clause entitled "Hazardous Materials". This indemnification obligation includes, but is not limited to fines assessed against Concessionaire, City, or others for whom City may be responsible, diminution in value of the Airport, damages for the loss of use of rentable or usable space or of any amenity of the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees which arise during or after the Term of this Agreement, including any renewals, as a result of such violation. This indemnification of City by Concessionaire also includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Airport which results from such a violation; and

**8.2.5** any and all loss(es), claim(s), damage(s), action(s) and suit(s) alleging that any good and/or service sold by Concessionaire infringes upon one or more United States Patent(s), copyright(s) or trademark(s) owned by anyone other than Concessionaire, or violates any provision of the Lanham Act.

**8.3 Indemnity Not Limited By Applicable Insurance:** Concessionaire further agrees that this agreement to indemnify and hold harmless the Indemnified Parties will not be limited to the limits or terms of the liability insurance, if any, required under this Agreement.

**8.4 Survival:** This clause entitles "Indemnity and also Harmless" shall survive any termination or expiration of this Agreement.

**9. INSURANCE AND BONDING:** Concessionaire must comply with all insurance and bonding requirements set forth in Appendix B.

**10. DAMAGE OR DESTRUCTION:**

**10.1 Partial Destruction of the Premises:**

**10.1.1 Insured Damage:** If the Premises are damaged by any casualty which is insurable under an insurance policy of the type required to be maintained by Concessionaire pursuant to this Agreement, regardless of whether the Premises is

tenantable or practically usable for the purpose for which it was formerly used, then Concessionaire must repair such damage as soon as reasonably possible and this Agreement will continue in full force and effect.

**10.1.2 Uninsured Damage:** If the Premises are damaged by any casualty not insurable under an insurance policy of the type required to be maintained pursuant to this Agreement, and such casualty is not caused by an act or omission of Concessionaire, its agents, servants or employees, then City's options are, either:

**10.1.2.1** repair such damage as soon as reasonably possible at City's expense, in which event this Agreement will continue in full force and effect; or give written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage of City's intention to terminate this Agreement effective as of the date of the occurrence of the damage. If City elects to terminate this Agreement, Concessionaire will have the right, within ten (10) days of the date of the City's notice to notify, City in writing of Concessionaire's intention to repair such damage. If Concessionaire fails to repair the damage to City's satisfaction within a reasonable period of time, this Agreement will automatically terminate effective as of the date of the occurrence of such damage.

**10.1.3** In no event shall City be required to repair any injury or damage of fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Concessionaire or at the direct or indirect expense of Concessionaire, Concessionaire must restore or replace the same in the event of damage provided that this Agreement is not terminated pursuant to this Section.

**10.1.4** If the Premises are damaged by any casualty not insurable under an insurance policy of the type required to be maintained pursuant to this Agreement, and such casualty is caused by an act or omission of Concessionaire, its agents, servants or employees, then Concessionaire must repair the damage to the City's satisfaction within a reasonable period of time, in which event this Agreement will continue in full force and effect.

**10.2 Total Destruction of Premises:** If the Premises is totally destroyed during the Term from any cause whether or not covered by the insurance required under this Agreement (including any destruction required by any authorized public authority), this Agreement will automatically terminate, effective as of the date of such total destruction.

**10.3 Partial Destruction of Concourse:** If fifty percent (50%) or more of any concourse on which the Premises are located is damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of any concourse on which the

Premises are located is damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected, City may, but is not obligated to, terminate this Agreement within ninety (90) days from the date of occurrence of such damage or destruction. If the City elects to terminate this Agreement within such ninety (90) day period, it will notify Concessionaire in writing and the termination will be effective upon the date of such notice. After the Agreement is terminated, Concessionaire must surrender the Premises to City within ten (10) days.

**10.4 Damage During Last Year of Term or Renewal Period:** If during the last year of the Term, including any renewal term, the Premises are partially destroyed or damaged and are not covered under an insurance policy required to be maintained pursuant to this Agreement, City may terminate this Agreement, effective as of the date of occurrence of such damage, by giving written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage. If City elects to terminate this Agreement, Concessionaire will have the right, within ten (10) days of the date of the City notice, to notify City in writing of Concessionaire's intention to repair such damage at Concessionaire's expense, without reimbursement from City, in which event this Agreement shall continue in full force and effect and Concessionaire must proceed to make such repairs as soon as reasonably possible.

**10.5 Reduction of Rent: Concessionaire's Remedies:**

**10.5.1** If the Premises are partially destroyed or damaged physically and the City is obligated to repair the Premises pursuant to this Agreement, the rent attributable to such partially destroyed or damaged Premises and payable for the period during which such damage and repair continues will be reduced in proportion to the extent to which Concessionaire's use of the Premises is impaired, calculated on a square foot basis, in accordance with the discretion and determinations of the Aviation General Manager. For example, if one-half of the Premises is unusable by Concessionaire as a result of such physical damage or destruction, then the rent payable for each month during which it exists and is being repaired will be reduced by one-half (1/2). Except for a reduction of rent (if any), Concessionaire shall have no claim against the City for any damage suffered by reason of any such damage, destruction or repair.

**10.5.2** If the City shall be obligated to repair the Premises under this Section and shall not commence such repair or restoration within forty five (45) days after such obligation shall accrue, Concessionaire at Concessionaire's option may cancel and terminate this Agreement by written notice to the City at any time prior to the commencement of such repair. In such event this Agreement shall terminate as of the date of such notice.

## **11. Reduction in Rent Due to Changes in Enplanements:**

### **11.1 Definitions:** These definitions apply to this Section entitled "Reduction in Rent Due to Changes in Enplanements".

**11.1.1 Affected Concourse** means a Concourse in which Concessionaire operates Concessions under the Agreement and is limited to Concourses T, A, B, C, D, E, and F;

**11.1.2 Atrium** means the facility at the Airport located between the North and South Terminals at which the Airport's Main Security Checkpoint is located.'

**11.1.3 RCC** means the rental car center located in a location near the City of College Park's Georgia International Convention Center. Passengers primarily rent cars from this facility.

**11.1.4 Enplaned Passenger** means and includes each passenger boarding an airplane from an Affected Concourse, whether such passenger has paid a fare for his/her ticket, is flying on frequent flyer miles, boards under a buddy pass, or otherwise;

**11.1.5 Year** means a 365 day period beginning on the effective date of the Agreement. For example, a Year under an Agreement effectively dated January 1, 2010 will be the period from January 1, 2010, through December 31, 2010, and a Year under an Agreement effectively dated August 1, 2011, will be the period from August 1, 2011, through July 31, 2012.

### **11.2 Reduction in Enplaned Passengers; Reduction of MAG:**

#### **11.2.1 Rules Applicable to Concessions Located in Concourses:**

**11.2.1.1** If the total number of Enplaned Passengers departing an Affected Concourse, as documented by the City's Department of Aviation in monthly reports received from Airlines departing flights from such Affected Concourse, for any whole month in the second or any subsequent Year during the term of the Agreement decreases by more than twenty-five percent (25%) from the same month of the previous Year, then MAG rent payments due under this Agreement will be reduced (the "Reduction") in the following manner:

**11.2.1.1.1 MAG Monthly Installment:** the monthly installment of the MAG due for the following month (and for that month only) will be reduced by the month over month percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease; and

**11.2.1.1.2 Agreement Year MAG:** the Minimum Annual Guarantee for the Agreement Year in which the reduced monthly payment amount falls will also be reduced by the dollar amount by which the monthly installment of the MAG was reduced. The same test and calculation shall apply each month thereafter until the first month that the reduction in Year over Year monthly enplanements is less than twenty-five percent (25%) at which time the adjusted MAG in effect prior to the adjustment provided for herein shall be reinstated.

**11.3 Calculation Examples:** For example, if the number of Enplaned Passengers for the month of July 2011 declined by thirty percent (30%) over the number of Enplaned Passengers for the month of July 2010, then:

**11.3.1** the MAG amount payable for the month of August 2011 will reduce by thirty percent (30%);

**11.3.2** the MAG for the Agreement Year in which August 2011 falls will decrease by the dollar amount of the reduction.

**11.4 Submission of Claim for Reduction; Reduction Only Available if Concessionaire is Paying MAG; Reduction Not Available if Concessionaire is Paying Percentage Rent:** Claims for a Reduction may only be submitted quarterly and may only include entire monthly periods. Reduction in Enplaned Passengers for partial monthly periods will not qualify for a Reduction. If, during any month in which Enplaned Passengers are reduced, Concessionaire is required to pay percentage rent, a claim for a Reduction will not be available. A claim for a Reduction must be submitted by the last day of the month following the last month in the quarter for which a Reduction is sought. For example, if there is a reduction in the number of Enplaned Passengers for an Affected Concourse or the Airport as a whole (depending on the location of the affected Premises) beginning on August 15, 2011, and continuing through December 31, 2011, a claim for a Reduction may only be made for the months of September, October, November, and December 2011, and must be submitted by January 31, 2012.

**11.5 Certification of Claim for a Reduction:** If Concessionaire desires to submit a claim for a Reduction, it must submit on forms developed by DOA.

## **12. DEFAULT BY TENANT:**

**12.1 Events of Default:** Concessionaire will be in default under this Agreement if:

**12.1.1** Concessionaire fails to pay rent or any other payment required under this Agreement when due to City, and that failure continues for a period of thirty (30) days after such rent or other payment is due whether or not the City has invoiced or provided Concessionaire with notice of any amount due or overdue.; or

**12.1.2** Concessionaire:

**12.1.2.1** becomes insolvent, or seeks the benefit of any present or future insolvency statute; or

**12.1.2.2** makes a general assignment for the benefit of creditors; or

**12.1.2.3** files a voluntary petition in bankruptcy; or

**12.1.2.4** files a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any other State; or

**12.1.2.5** consents to the appointment of a receiver, trustee, or liquidator of any of its property; or

**12.1.2.6** files a petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, is involuntarily filed against Concessionaire and not dismissed within sixty (60) days after the filing; or

**12.1.2.7** transfers its interest under this Agreement, without the prior written approval of City, by reason of death, operation of law, assignment, sublease agreement or otherwise, to any other person, firm or corporation; or

**12.1.2.8** abandons, deserts or vacates the Premises, including, but not limited to, ceasing to provide its services at the Premises for thirty (30) days or more; or

**12.1.2.9** files any lien against the Premises because of any act or omission of Concessionaire, and is not discharged by Concessionaire by payment, bond or otherwise within 20 days after receipt of notice of the lien by Concessionaire; or

**12.1.2.10** fails to comply with the requirements set forth in Appendix B; Insurance and Bonding Requirements; or

**12.1.2.11** fails to keep, perform or observe any term, covenant or condition of this Agreement; or

**12.1.2.12** uses or gives its permission to any person to use any portion of Premises for any illegal purpose or purpose in violation of this Agreement; or

**12.1.2.13** (including any venture partner of Concessionaire), or any of their respective officers, directors, principal shareholder(s) or affiliates, is convicted of or pleads guilty to any crime in any way related to the operation of the Premises or the Airport or a public sector, governmental or quasi-governmental project or contract or related to the safety and/or security of any Airport, governmental entity or its citizens. For purposes of this Agreement:

**12.1.2.13.1** "principal shareholder" means an owner of shares (or equity interest, if other than a corporation) representing ten percent (10%) of the voting control and/or participation (through dividends or other distributions) in the profits of an entity:

**12.1.2.13.2** "affiliate" means any person or entity which directly or indirectly controls or is controlled by, or is under common control with an entity; and

**12.1.2.13.3** "control" or "controlling" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity whether through the ownership of voting securities, by contract or otherwise; or

**12.1.2.14** intentionally or willfully misrepresents to City any material fact; or

**12.1.2.15** made any material misrepresentation or failed to make full and accurate disclosure to City in the documents, questionnaires and other materials submitted by Concessionaire with its Proposal pursuant to which this Agreement was awarded to Concessionaire, or failed to comply with all requirements, including without limitation, the ethical standards policy, set forth in the RFP; or

**12.1.2.16** acts or fails to act results in the suspension or revocation of, for a period of more than thirty (30) days, of any rights, powers, licenses, permits or authorities necessary for the operation of its business at the Premises; or

**12.1.2.17** fails to pay any lawful tax or assessments required to be paid under this Agreement.

**12.2 City's Remedies:** If Concessionaire is in default, City will notify Concessionaire in writing of the nature of the default. If Concessionaire, where a specific time period for the cure is provided in the applicable subsection of this Agreement, does not cure the default within that period or, where a time period for the cure is not specifically provided in the applicable subsection, does not cure the default within seven (7) days from receipt of notice from City, City may, without notice to Concessionaire's sureties, if any, elect to exercise any of the following remedies:

**12.2.1** Allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies under it, including, without limitation, the right to

assess fines and the right to collect rent as it becomes due together with interest at the rate of one and one and one half percent (1.5%) per month.

**12.2.2** Continue this Agreement in full force and effect and enter the Premises and relet all or any portion of it to other parties for Concessionaire's account. Concessionaire must pay to City on demand all costs City incurs in entering the Premises and reletting it, including, without limitation, brokers' commissions, and expenses for repairs and remodeling, attorneys' fees and all other actual costs. Reletting may be for a period shorter or longer than the remaining Term. During the term of any reletting, Concessionaire must pay to City the rent due under this Agreement on the date due, less any net rents City receives from any reletting.

**12.2.3** Terminate Concessionaire's rights under this Agreement at any time and recover from Concessionaire all costs, expenses, losses and damages recoverable under this Agreement or applicable law as a result of Concessionaire's default and the termination.

**12.2.4** Cure any default at Concessionaire's cost. If City at any time, by reason of Concessionaire's default, pays any sum to cure any default, the sum paid by City shall be immediately due from Concessionaire to City on demand, and shall bear interest at the rate of one and one and one half percent (1.5%) per month from the date paid by City until the date City is fully reimbursed by Concessionaire.

**12.2.5** Exercise any and all other rights or remedies available under this Agreement or at law or in equity.

**12.3 Concessionaire Not in Default:** If, after termination for default, it is determined for any reason that Concessionaire was not in default, the rights and obligations of the parties will be the same as if the Agreement had been terminated pursuant to the Section entitled "Termination for Convenience".

#### **12.4 Security Interest:**

**12.4.1** In addition to the statutory landlord's lien, Concessionaire grants to City a valid security interest in all goods, wares, equipment, fixtures, furniture, improvements and other personal property located now or in the future within the Premises, including the proceeds of such items, to secure payment of all rentals and other sums of money becoming due from Concessionaire under this Agreement, and to secure payment of any damages or losses that City may suffer by reason of the breach by Concessionaire of this Agreement. Concessionaire may not remove such goods, wares, equipment, fixtures, furniture, improvements and other personal property located now or in the future within the Premises from the Premises without the written consent of City until all arrearages in rent,



as well as any other sums of money then due to City under this Agreement, have been paid and discharged and all the covenants, agreements and conditions of this Agreement have been fully complied with and performed by Concessionaire.

**12.4.2** Upon the occurrence of an event of default by Concessionaire, City may, in addition to any other remedies provided in this Agreement, enter upon the Premises and take possession of any goods, wares, equipment, fixtures, furniture, improvements and other personal property of Concessionaire situated on the Premises, without liability for trespass or conversion, and sell them at public or private sale, with or without having such property at the sale, after giving Concessionaire reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale City or its assigns may purchase the property unless otherwise prohibited by law. The requirement of reasonable notice to Concessionaire will be met if such notice is given in the manner prescribed in the Section entitled "Notices", at least five (5) days before the date of the sale.

**12.4.3** The proceeds from any such sale, less any expenses of the City connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and other expenses), will be applied as a credit against the debts payable by Concessionaire, or as otherwise required by law; and Concessionaire will pay any deficiencies immediately.

**12.4.4** Upon request by City, Concessionaire agrees to execute and deliver to City a financing statement in a form sufficient to perfect the security interest of City in the property and the proceeds under the provisions of the Uniform Commercial Code in force in the State of Georgia. By accepting a grant of the security interest set forth in this provisions, the parties agree that the City is not waiving its rights under any statutory lien for the payment of rent granted under this Agreement or applicable law.

### **13. TERMINATION FOR CONVENIENCE:**

- 13.1** The City shall have the right to terminate the Contract without cause at any time during the Term by giving written notice to Concessionaire at least thirty (30) days prior to the date such termination is to be effective. Should the City terminate the Contract prior to its expiration, the City shall reimburse the Concessionaire for the reasonable and proper unamortized costs of the capital Improvements, made by or at the cost of the Concessionaire, and approved in writing by the Aviation General Manager. Concessionaire must document the costs of any and all capital Improvements in a form and detail satisfactory to the Aviation General Manager and submit same within thirty (30) calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the Improvements. The capital costs of the Improvements shall be amortized based upon a straight-line depreciation schedule over the initial Term of the Contract, with zero (0) salvage value.

- 13.2** Reimbursement for unamortized costs of capital improvements shall be the Concessionaire's sole remedy in the event of Termination for Convenience. Concessionaire must waive, in the Contract, any claims for damages, including loss of anticipated profits, in the event that they City terminates the Contract for convenience.

#### **14. FINES FOR VIOLATIONS**

- 14.1** If Concessionaire defaults under or violates material provisions of this Agreement, in lieu of, or in addition to, any other available remedy, the Aviation General Manager may elect to impose the charges described below on a per diem basis per violation:

| Infractions:   | <u>Fine per Day</u> |                 |                 |
|--|---------------------|-----------------|-----------------|
|  | 1 <sup>st</sup>     | 2 <sup>nd</sup> | 3 <sup>rd</sup> |
| Violation of Space Use   | \$500               | \$750           | \$1000          |
| Failure to Maintain required Hours of Operation  | \$500               | \$750           | \$1000          |
| Failure to Submit Required Documents and Reports   | \$500               | \$750           | \$1000          |
| Failure to remedy Customer Service, Cleanliness, Quality Assurance, Operations, and/or Facility standards              | \$500               | \$750           | \$1000          |
| Infractions within 48 hrs<br>(As measured from the date of Each written notification)                                  | \$500               | \$750           | \$1000          |
| Failure to provide pest control Records on a monthly basis<br>And/or display manifest reports<br>On file in each store | \$500               | \$750           | \$1000          |
| Unauthorized Advertising, Signage (as defined as Written, printed Blade or storefront)                                 | \$500               | \$750           | \$1000          |
| Destruction of airport public Facility deemed caused by  | \$500               | \$750           | \$1000          |

Associates or associate travel  
In unauthorized areas

Failure to comply with  
any and all published  
DOA, basic terms of the lease,  
Federal, State  
Local Policies, Regulations,  
Directives or Standards

\$500 \$750 \$1000

Repeated violations of the above listed infractions may result in the Concessionaire being in default of the Concessions Agreement.

- 15. UNAUTHORIZED ACCESS:** Concessionaire is responsible for preventing unauthorized persons from gaining access to restricted areas of the Airport or any other part of the Airport through the Premises or any door under Concessionaire's control. If federal security regulations are violated as a result of trespass by unauthorized persons into restricted areas of the Airport or any other part of the Airport through the Premises or any door under Concessionaire's control, or if such door is left unsecured in violation of federal security regulations, and City is subjected to any liability, including, but not limited to, a fine(s) by the Transportation Security Administration, Concessionaire must reimburse City for the full amount of such fines promptly upon receipt of an invoice from City and pay for any liability assessed against City as a result of such unauthorized access.

**16. SURRENDER OF PREMISES:**

- 16.1** Concessionaire must yield and deliver peaceably to City possession of the Premises and all Concessionaire improvements in good condition, reasonable wear and tear accepted, upon the expiration or earlier termination of this Agreement.
- 16.2** Concessionaire must remove Concessionaire's signs and trade fixtures from the Premises and must surrender the Premises in clean and presentable condition. City will retain Concessionaire's Performance and Payment Bond(s) or other securities required under Appendix B until such time as all conditions of this Agreement have been satisfied, all keys to the Premises are delivered to the Aviation General Manager by Concessionaire, the Aviation General Manager determines that the Premises are clean and in good repair and the applicable period for filing liens or other claims has passed. Concessionaire will be liable to City for City's costs for storing, removing and disposing of any alterations or Concessionaire's personal property, and of restoration of the Premises.

## **17. OWNERSHIP OF INFORMATION; CONFIDENTIALITY**

**17.1** All reports, information, data or other documents given to, prepared by or assembled by Concessionaire arising out of the work performed under this Agreement are the exclusive property of City – with the exception of employee data covered under the Privacy Act- and will be kept confidential and may not be made available to any individual or organization by Concessionaire without the prior written approval of City, provided however that these provisions shall not apply to data that is in the public domain; was previously known to Concessionaire; or was independently acquired by Concessionaire from third parties who are under no obligation to City to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Concessionaire, nor shall they be interpreted in any way to restrict Concessionaire from complying with a legally enforceable court order to provide information or data; provided, however, Concessionaire shall immediately place City on notice of such court order to permit City the opportunity to determine whether a protective order shall be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

**17.1.1** Except as provided in the preceding paragraph, Concessionaire shall keep confidential, and shall require its employees, agents, subordinates, subcontractors, or sublessees to keep confidential all information disclosed by City or its consultants to Concessionaire or developed by Concessionaire or Concessionaire's employees, agents, subordinates, subcontractors, or sublessees in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of this Agreement and shall entitle City to recover from Concessionaire any damages City incurs because of such breach.

**17.1.2** City shall have the right to any specifications, computer programs, technical reports, operating manuals and similar work product developed and paid for under this Agreement. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by Concessionaire, its officers, agents, employees, subcontractors, or sublessees, City shall have, without cost or expense to it, an irrevocable, nonexclusive royalty-free license to make, have made and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by City. Promptly upon request by City, Concessionaire shall furnish or obtain from the appropriate person a form of license satisfactory to City, but it is expressly understood and agreed that, as between City and Concessionaire the license herein provided for shall nevertheless arise for the benefit of City immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement.

as provided for above. Such license agreement may be transferred by City to its successors immediate, or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by City, but such license shall not be otherwise transferable.

**18. HAZARDOUS MATERIALS:**

**18.1** Concessionaire shall not cause or permit any Hazardous Material to be brought, kept or used in or about the Premises or the Airport by Concessionaire, its agents, employees, contractors, or invitees. Without limiting the foregoing, if the presence of any Hazardous Material in the Airport caused or permitted by Concessionaire results in any contamination of the Airport, Concessionaire shall promptly take all actions at its sole expense as are necessary to return the Airport to the conditions existing prior to the introduction of such Hazardous Material to the Airport; provided that City's approval of such actions, and the contractors to be used by Concessionaire in connection therewith, shall first be obtained.

**18.2** The term "Hazardous Material" means any hazardous or toxic substance, material, or waste, which is or becomes regulated by any local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (ii) designated a "hazardous substance" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317, or (iii) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (iv) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

**18.3** In addition to, and independent of any other right of entry provided herein, City and its employees, representatives and agents shall have access to the Premises during reasonable hours and upon reasonable notice to Concessionaire in order to conduct periodic environmental inspections and tests of Hazardous Material contamination in the Premises.

**19. AIRPORT SECURITY REQUIREMENTS:** Concessionaire shall comply, at its own expense, with the TSA and the City's security requirements for the Airport including, but not limited to employee training and badging. Concessionaire shall cooperate with the TSA and the City on all security matters and shall promptly comply with any project security arrangements established by City. Compliance with such security requirements shall not relieve Concessionaire of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Concessionaire's obligation with respect to all applicable federal, state and local laws and regulations and its duty

to undertake reasonable action to establish and maintain secure conditions at and around the Premises and throughout the Airport.

**20. CITY POLICIES; DBE BUSINESS PARTICIPATION AND NON-DISCRIMINATION PROVISIONS:**

**20.1 City's Required Policies:** Concessionaire acknowledges that Concessionaire has reviewed, is familiar with and agrees to comply with:

**20.1.1** City's Disadvantaged Business Enterprise Policy (See Appendix A);

**20.1.2** City's Equal Employment Opportunity Policy (See Code Sections 2-1200 and 2-1414; Appendix A);

**20.1.3** City's Business Non-Discrimination Policy (See Code Sections 2-1358 and 2-1387; Appendix A);

**20.1.4** City's Atlanta Workforce Agency/First Source Jobs Policy and Agreement (See Code Section 2-1655; Appendix A);

**20.1.5** City's Ethics in Public Contracting Policy (See Code Sections 2-1481 through 2-1490);

**20.1.6** City's Conflicts of Interest Policy (See Code Section 2-1482);

**20.1.7** City's Prohibition against Predatory Lending (See Code Section 2-1213);

**20.1.8** City's Green Initiatives (Atlanta Sustainable Building Ordinance (ASBO))

**20.2 Non-discrimination Certificates:** By the execution of this Agreement, Concessionaire certifies as follows:

The services covered by this Agreement will not discriminate in any way in connection with this Agreement against any employee or applicant for employment because of race, color, religion, sex, national origin or physical handicap, and Concessionaire will take affirmative action to insure that applicants are employed, and those employees are treated during employment without regard to their race, color, religion, sex, national origin or physical handicap. Concessionaire shall state in all advertisements and solicitations that it is an equal employment opportunity employer.

**20.3 USDOT Non-discrimination Ordinance:** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR

part 23, subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, religion, national origin, sex or physical handicap in connection with the award or performance of any agreement covered by 49 CFR part 23, subpart F. Concessionaire agrees to include the above statements in any subcontracts or subsequent agreements that it enters into and cause those businesses to similarly include the statements in subsequent agreements.

## **20.4 Public Use and Federal Grants:**

**20.4.1** To the best of Concessionaire's knowledge, the Premises are subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between City of Atlanta and the United States of America, as amended. City and Concessionaire represent that none of the provisions of this Agreement violates any of the provisions of the Sponsor's Assurance Agreement.

**20.4.2** It is further covenanted and agreed that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

**20.4.3** Concessionaire for itself, its subconcessionaires, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over, or under the Premises and the furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to the Code of Federal Regulations for the Department of Transportation at Title 49, Subtitle A, Office of the Secretary of Transportation, Part 21, titled "Nondiscrimination in Federally Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964", and as said regulations may be amended; and (4) in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement thereon, and hold the same as if this Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of 49 CFR Subtitle A, Part 21 are followed and completed, including the exercise or expiration of appeal rights.

**21. MISCELLANEOUS PROVISIONS:**

**21.1 Award and Execution of Agreement:** The award and execution of this Agreement by City is authorized by Resolution No. \_\_\_\_\_, adopted by City's Council on \_\_\_\_\_, 2012, and approved by City's Mayor on \_\_\_\_\_, 2012, attached to this Agreement as Exhibit B. This Agreement will not become binding on City and City will incur no liability under it until it has been duly executed by Concessionaire, returned to City with all required submittals, including insurance and bonding, executed by the Mayor, attested to by the Municipal Clerk, approved by City Attorney as to form and delivered to Concessionaire.

**21.2 Identity of Owner and Manager:** The owner of record of the property of which the Premises is a part is City. The person authorized to manage the property, which includes the Premises, is the Aviation General Manager of the Department of Aviation.

**21.3 Delegation of Authority:** Any act(s), whether discretionary or ministerial, that the Aviation General Manager is authorized or required to perform under this Agreement may be performed by such person(s) as the Aviation General Manager shall designate in writing to perform such act(s).

**21.4 No Partnership or Joint Venture:** City and Concessionaire are not and shall not be deemed to be, for any purpose, partners or joint ventures with each other.

**21.5 Independent Contractor; No Contractual Relationship:** Concessionaire will perform under this Agreement as an independent entity and not as an agent or employee of City. No contractual relationship between City and any subconcessionaire, subcontractor, or subconsultant is created by an approval of City for use under this Agreement.

**21.6 Usufruct:** The rights of Concessionaire hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

**21.7 Recording Prohibited:** Neither City nor Concessionaire shall be entitled to record this Agreement, any memorandum or short form of this Agreement or any affidavit with respect to this Agreement.



**21.8 Attorneys' Fees:** If City should bring any action under this Agreement or consult or place this Agreement, or any amount payable to Concessionaire pursuant to this Agreement, with an attorney concerning or for enforcement of any of City's rights hereunder, then Concessionaire agrees in each and any such case to pay to City all costs, including, but not limited to, court costs and reasonable attorneys' fees, incurred by City in connection therewith.

**21.9 Severability:** If any provision of this Agreement or the application thereof to any person or circumstances shall become invalid or unenforceable to any extent, such provision shall be struck and severed and the remainder of this Agreement shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Agreement shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by City shall not discharge or relieve Concessionaire from Concessionaire's obligation to perform each and every covenant and agreement of this Agreement to be performed by Concessionaire.

**21.10 Gender:** Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**21.11 Exhibits and Attachments:** All exhibits, appendices, attachments, riders and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof for all intents and purposes.

**21.12 Time of the Essence:** Time is of the essence with regard to each provision of this Agreement.

**21.13 Evidence of Authority:** If Concessionaire is other than a natural person, Concessionaire shall deliver to City such legal documentation as City may request to evidence the authority of those signing this Agreement to bind Concessionaire.

**21.14 Drug-Free Workplace Policy:** Concessionaire acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City's Premises.

**21.15 Illegal Immigration Reform and Enforcement Act:** In compliance with the Illegal Immigration Reform and Enforcement Act of 2011, O.C.G.A. § 13-10-90, et. seq., Concessionaire has executed documents attached as Exhibit E, which fully executed documents are incorporated into this Concessions Agreement by reference.

**21.16 Applicability of Code Provisions:** All terms of this Agreement shall be governed by and shall be subject to all the provisions of the Code of Ordinances of City of Atlanta, Georgia, now and as may be amended from time to time.

**21.17 Successors and Assigns:** Each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of City and Concessionaire, and the legal representatives, successors and assigns of either or both of them.

**21.18 Notices:** All notices required to be given to City hereunder shall be in writing and given by postage prepaid registered or certified mail, return receipt requested, addressed to the Aviation General Manager of the Airport, Office of the General Manager, P.O. Box 20509, Atlanta, Georgia 30320. No notices shall be effective if transmitted by telex, fax or other electronic delivery. All notices required to be given to Concessionaire hereunder shall be sent to the following address:

ATTN:

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**21.19 Interpretation:** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Concessionaire. This Agreement shall be construed and performed according to the laws of the State of Georgia. In the event of a dispute with regard to interpretation of any provision of this Agreement, the parties agree to bring suit and be subject to the jurisdiction of the Fulton County Superior Court.

**21.20 Section Headings:** The section headings contained herein are for the convenience of City and Concessionaire and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

**21.21 Reference to Clause or Section Entitled “\_\_\_\_\_”:** When reference in this Agreement is made to a specific clause with a specific title set forth in a section heading or section number, such reference will include all sections and subsections of such clause.

**21.22 Integrated Agreement, Modification:** This Agreement contains all the agreements of the parties and cannot be further amended or modified except by written agreement. If the parties hereto previously have entered into or do enter into any other lease, license, permit or agreement covering Premises or facilities at the Airport, this Agreement and the terms, conditions, provisions and covenants hereof shall apply only to the Premises herein particularly described, and this Agreement or any of the terms, conditions, provisions or covenants hereof shall not in any way or in any respect change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the parties hereto under or by reason of any other said lease, permit, license or other agreement between said parties.

**21.23 Force Majeure:** Neither party shall be deemed to be in breach of this Agreement by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively “Force Majeure Event”). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event. Notwithstanding the existence of any Force Majeure Event, this Clause shall not apply to and Concessionaire shall not be relieved of its obligation to pay rent or other sums due hereunder, such obligation being absolute and unconditional.

**21.24 Incorporation by Reference:** Request for Proposals FC-\_\_\_\_\_; \_\_\_\_\_, and the proposal submitted by Concessionaire in response thereto are incorporated into this Agreement by this reference. In the event of any inconsistency between this Agreement and the RFP or proposal, this Agreement shall control.

**CONCESSIONAIRE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***ATTEST:***

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary/Assistant Secretary (SEAL)

**CITY:**

***ATTEST:***

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Municipal Clerk (SEAL)

***APPROVED:***

***APPROVED:***

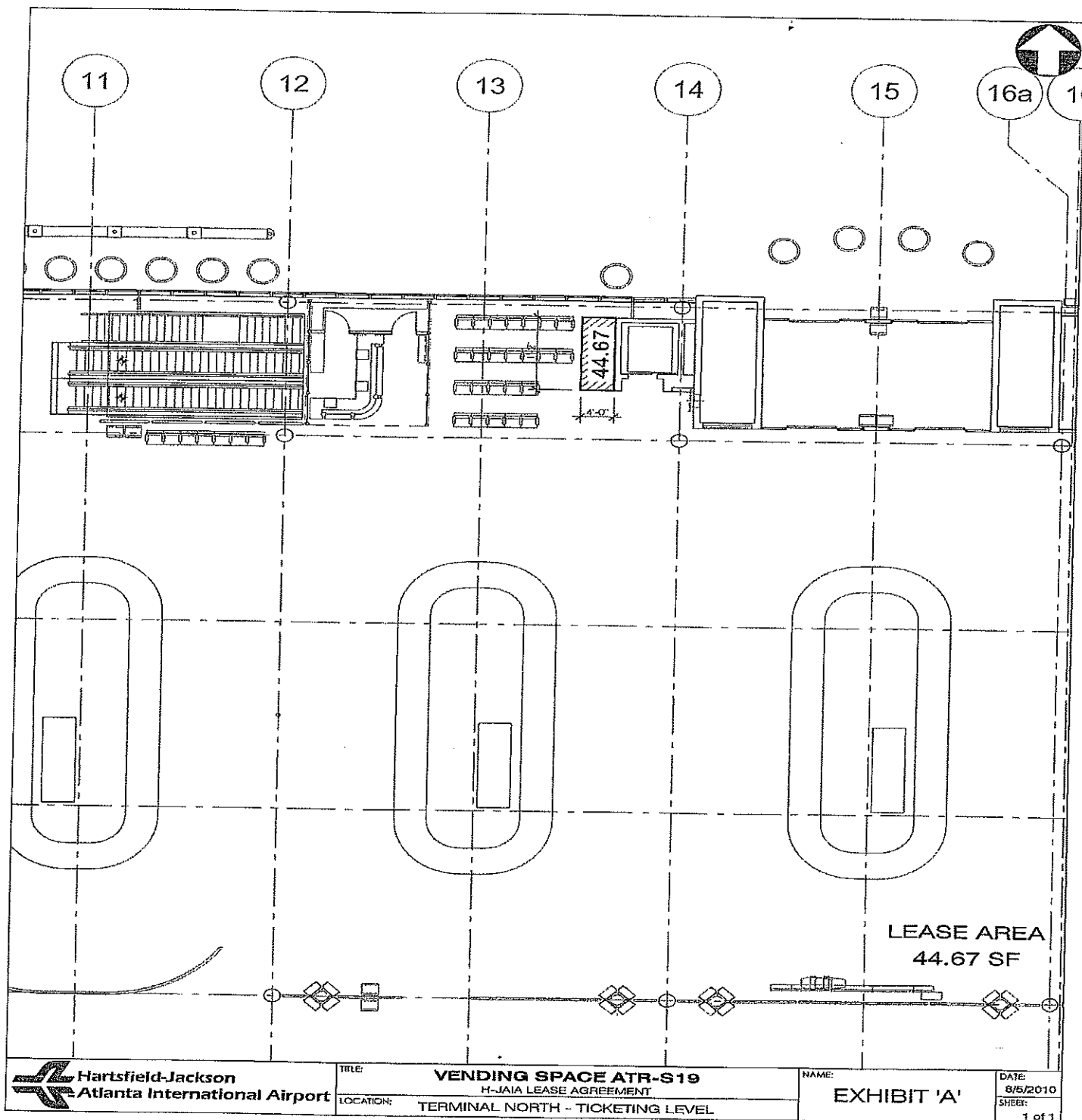
\_\_\_\_\_  
Chief Procurement Officer

\_\_\_\_\_  
Aviation General Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**Exhibit A; Description/Map of Premises Location**





100.00  
25'-0"  
4'-0"

K

L

M

M1

N

LEASE AREA  
100.00 SF

O



**Hartsfield-Jackson  
Atlanta International Airport**

TITLE:

**VENDING SPACE T-S1  
H-JAIA LEASE AGREEMENT**

LOCATION:

**T CONCOURSE - BOARDING LEVEL**

NAME:

**EXHIBIT 'A'**

DATE:

**8/5/2010**

SHEET:

**1 of 1**



LEASE AREA  
179.98 SF

A33

179.98

A34

A32

97

96

95

94

93

92

91

90

B

C

D



Hartsfield-Jackson  
Atlanta International Airport

TITLE:

VENDING SPACE A-S3  
H-JAIA LEASE AGREEMENT

LOCATION:

A CONCOUSE - BOARDING LEVEL

NAME:

EXHIBIT 'A'

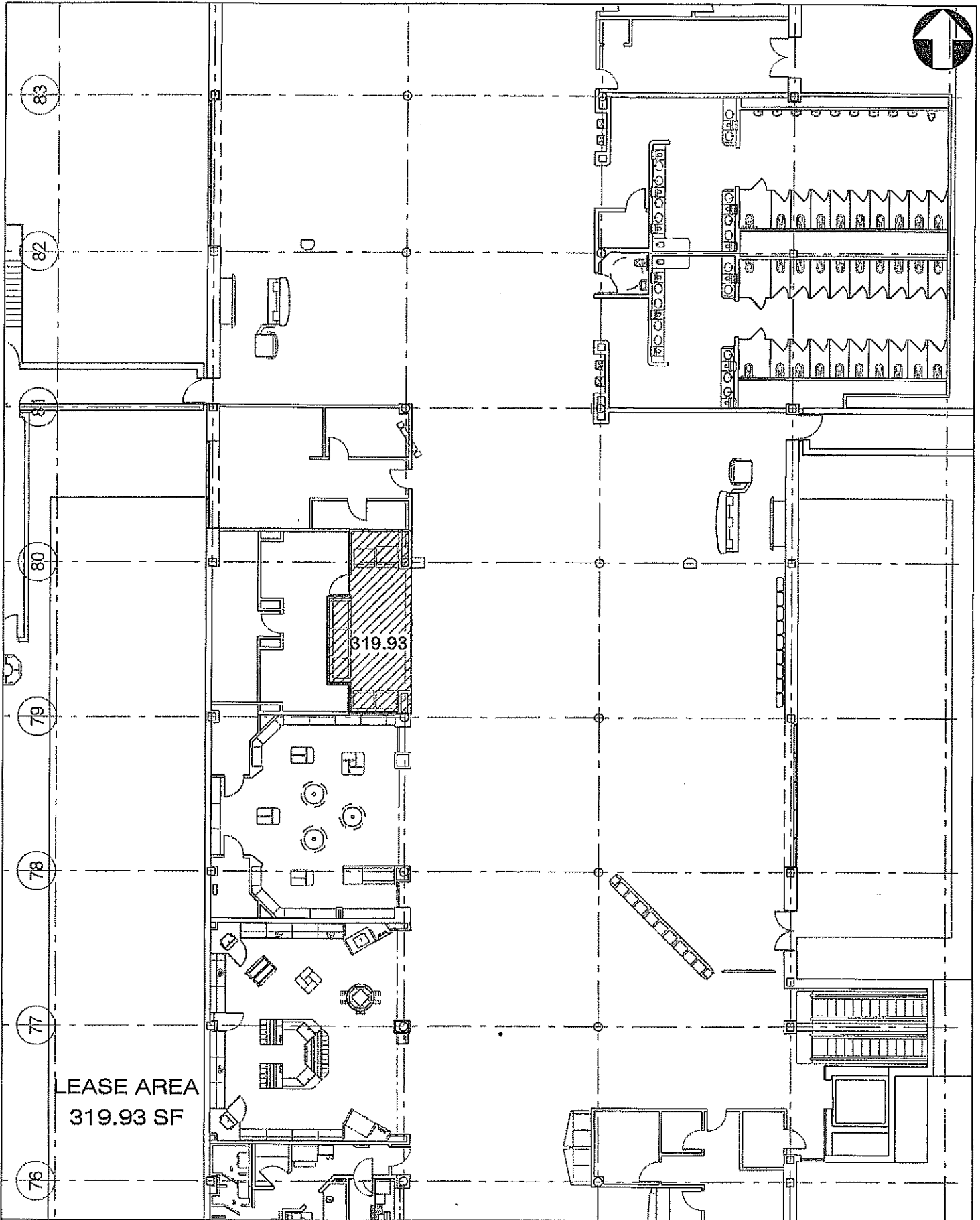
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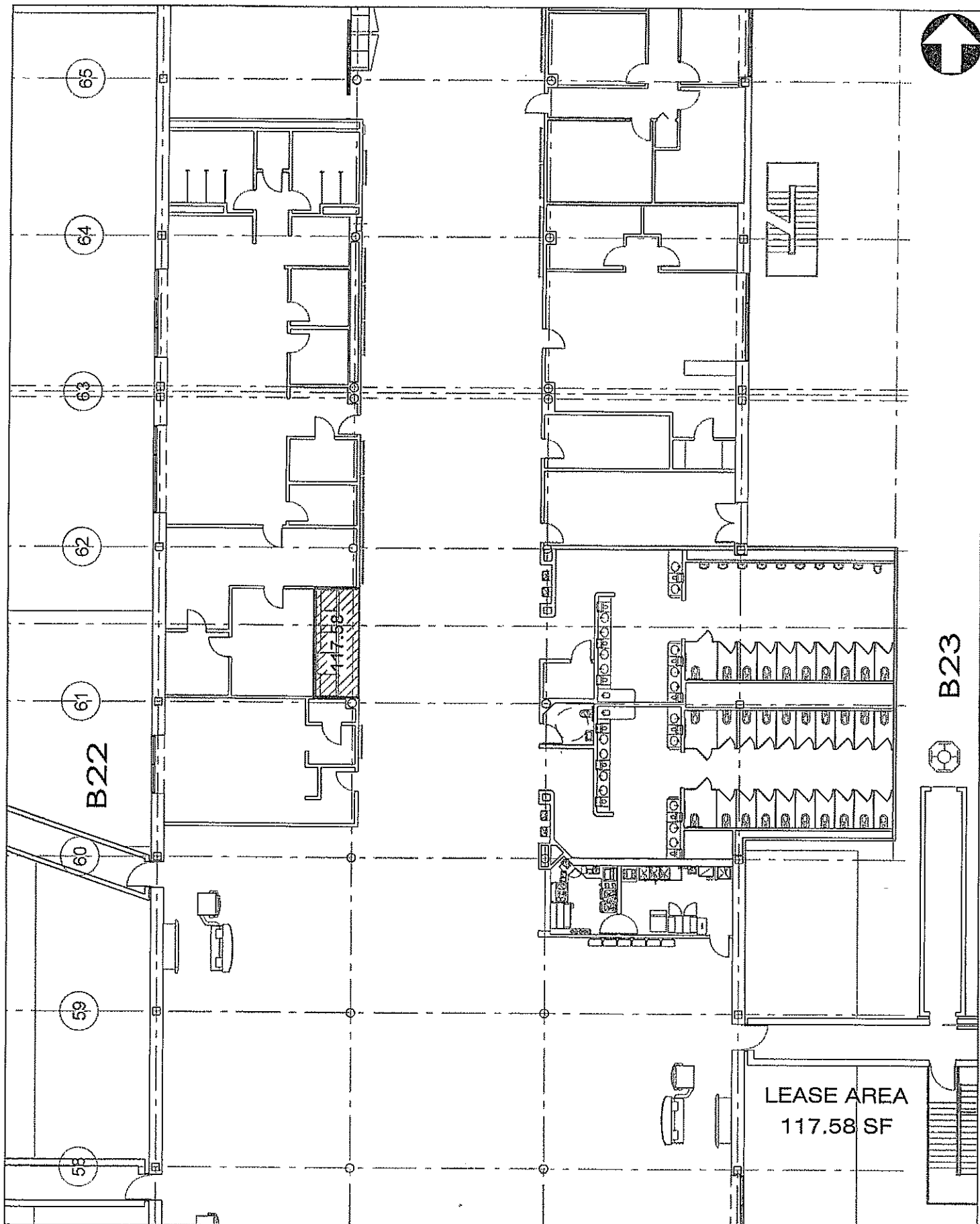
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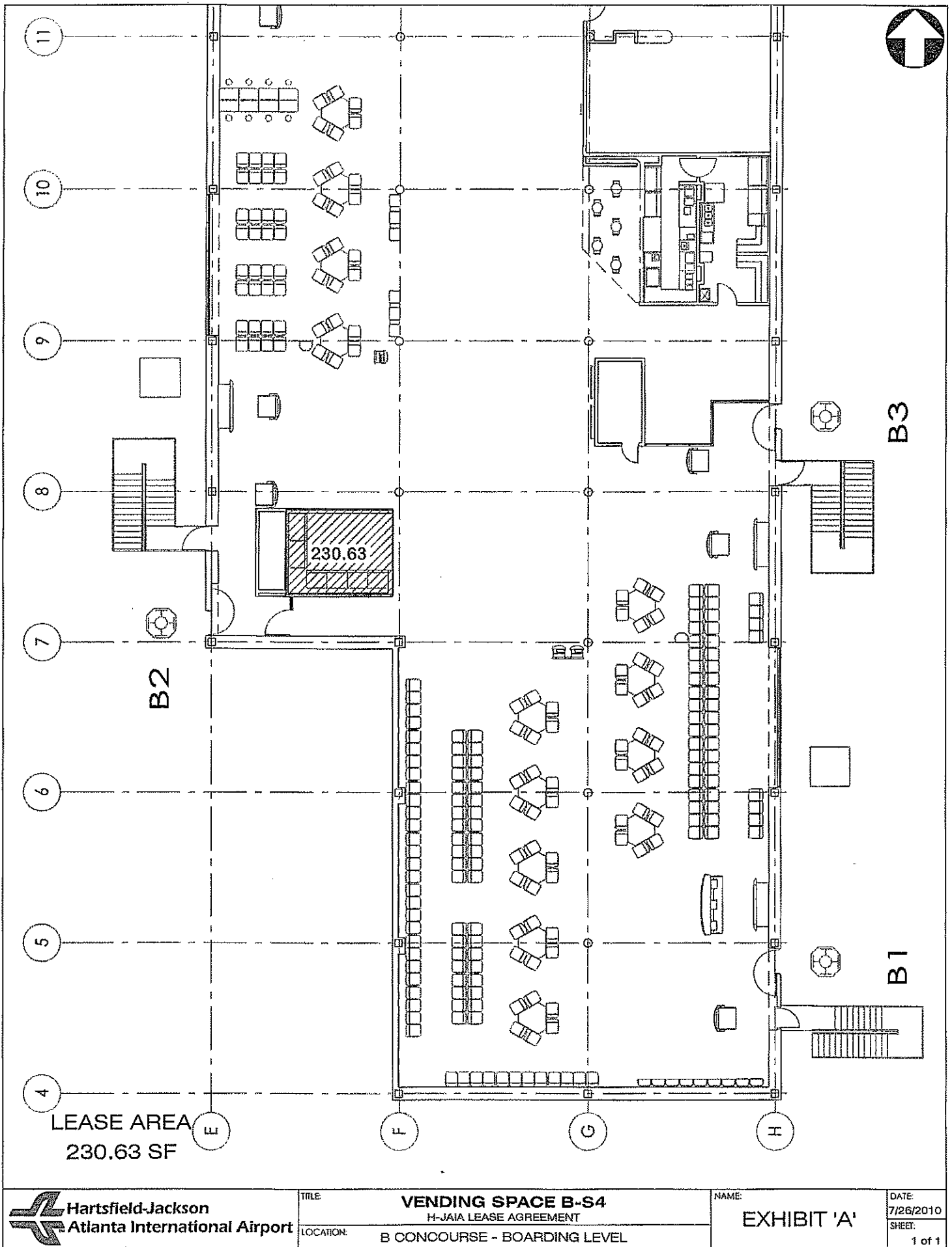
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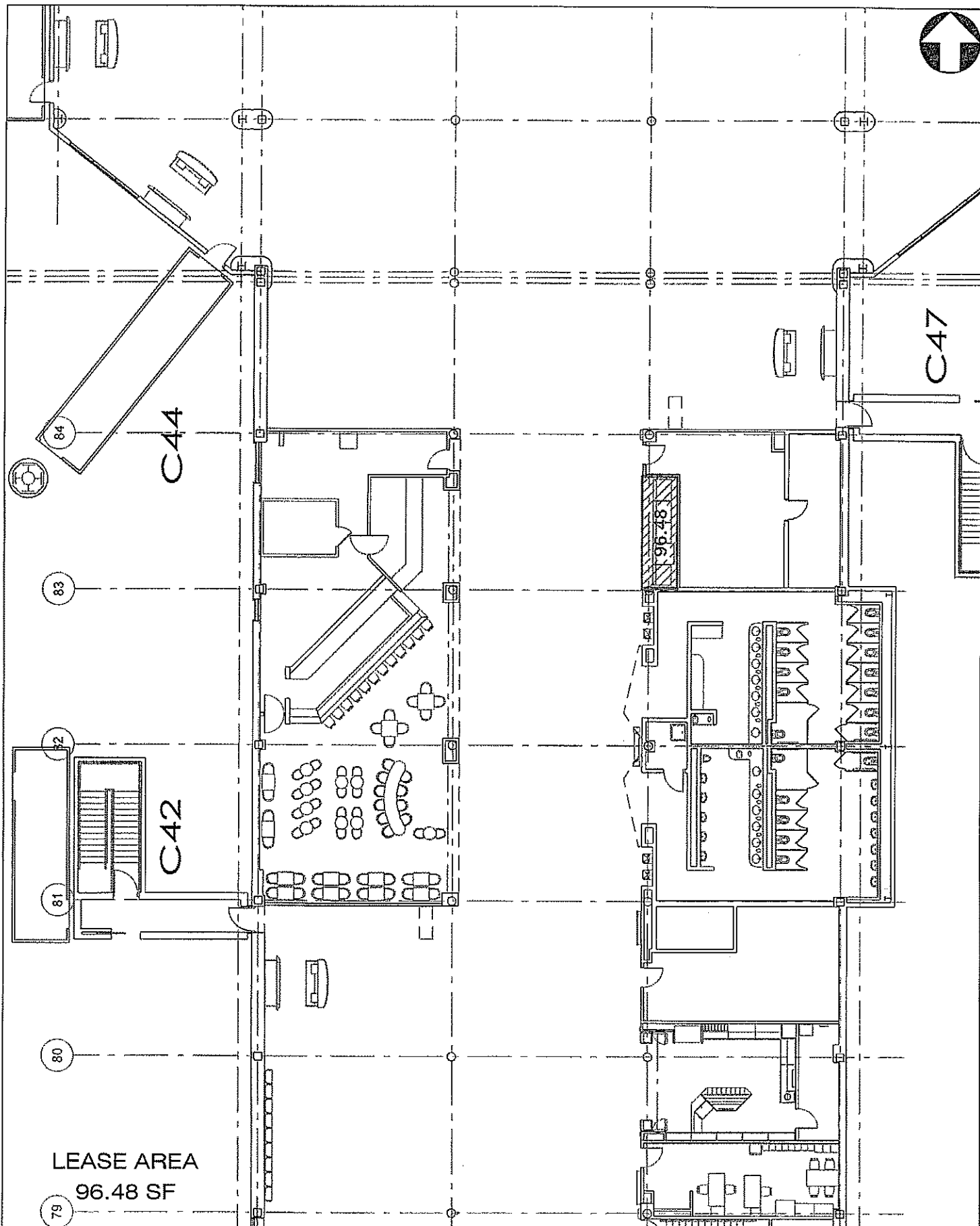
1 of 1











LEASE AREA  
96.48 SF



Hartsfield-Jackson  
Atlanta International Airport

TITLE:

**VENDING SPACE C-S2**  
H-JAIA LEASE AGREEMENT

LOCATION:

C CONCOURSE - BOARDING LEVEL

NAME:

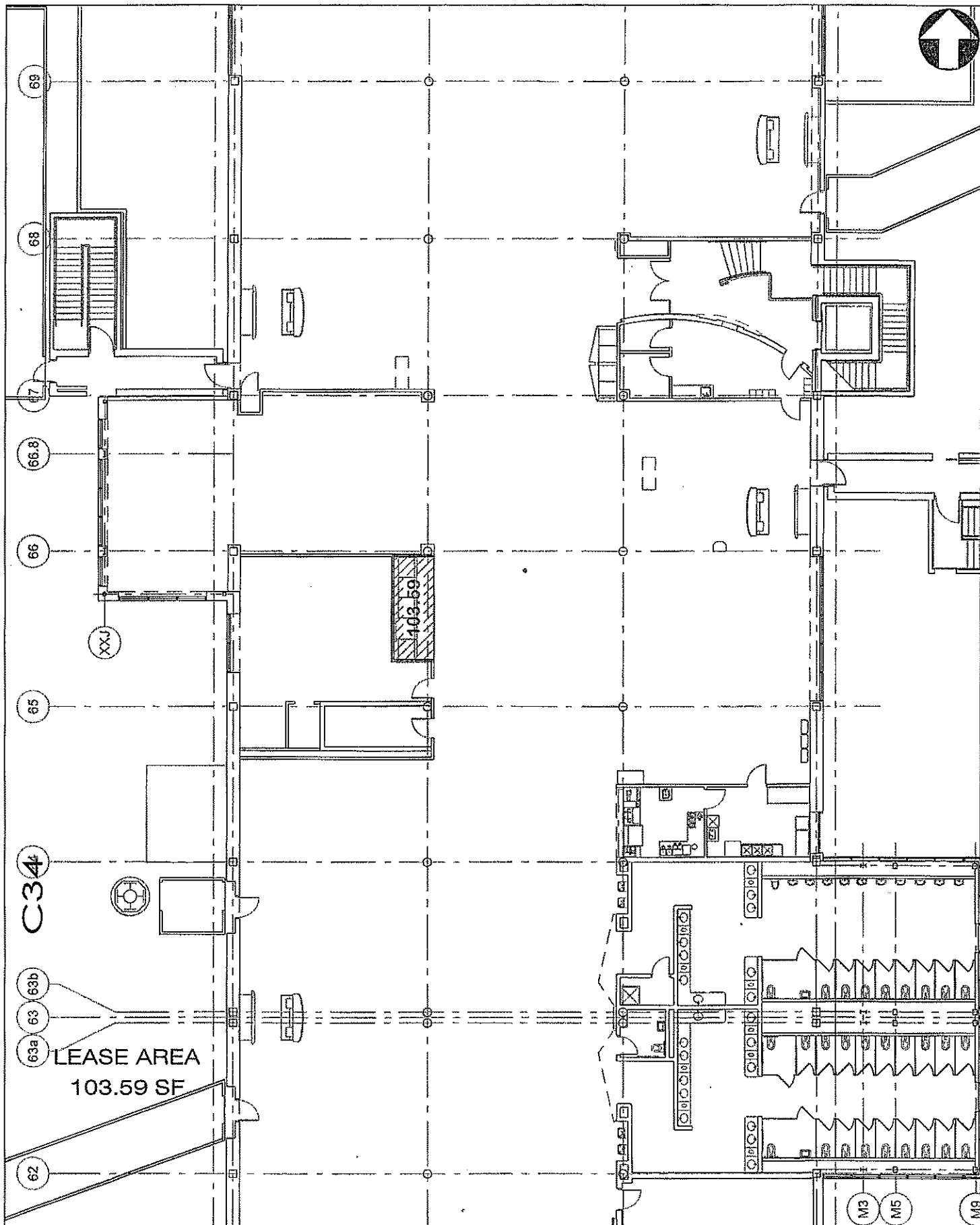
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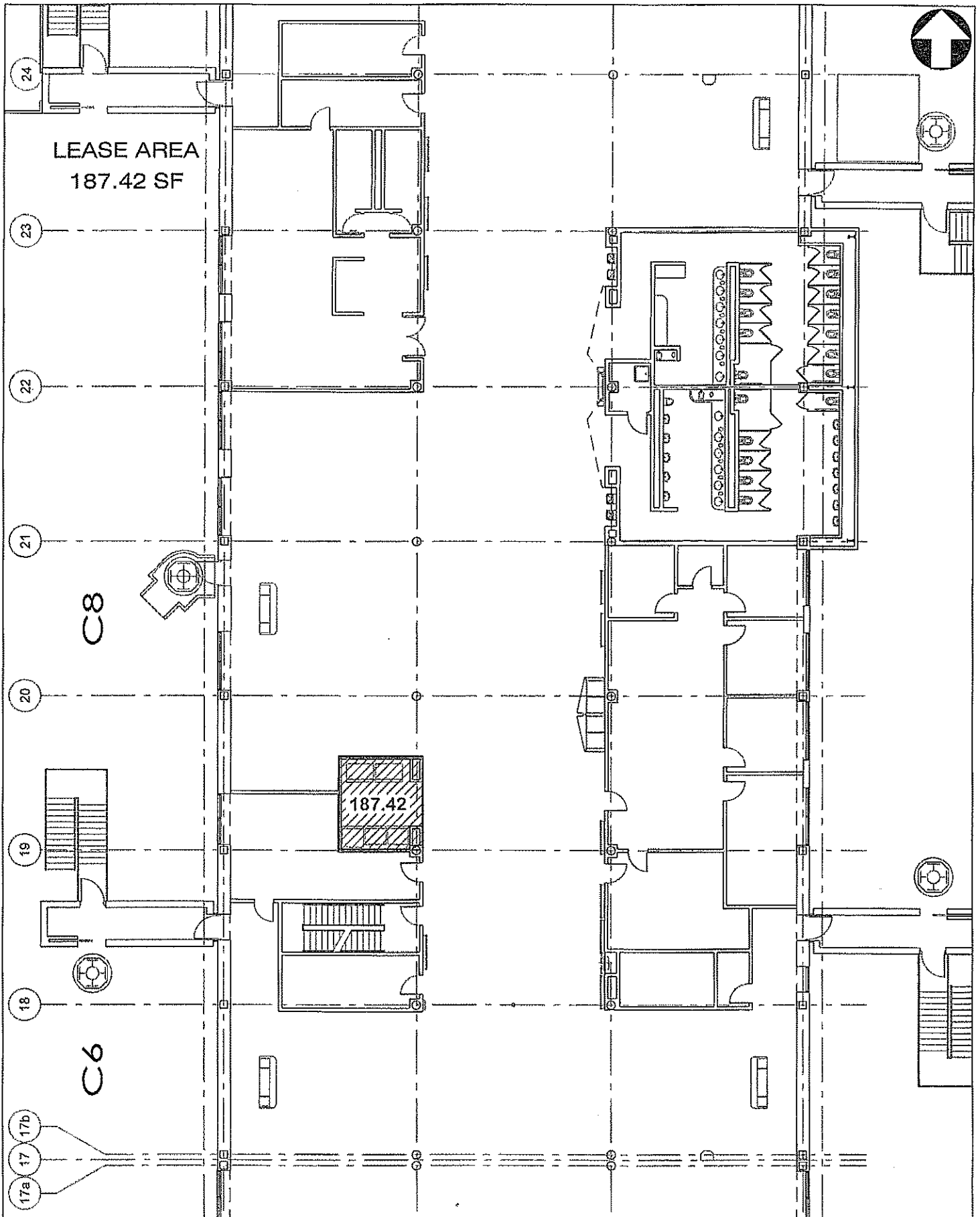
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7/26/2010

SHEET:

1 of 1







D28

72

71

70

69

68

67

66

65

D27

LEASE AREA  
94.89 SF

D25

D26

**VENDING SPACE D-S3**  
H-JAIA LEASE AGREEMENT

LOCATION: D CONCOURSE - BOARDING LEVEL

NAME:

**EXHIBIT 'A'**

DATE:

7/26/2010

SHEET:

1 of 1



**Hartsfield-Jackson**  
**Atlanta International Airport**



D14

D13

D11a

134.55

LEASE AREA  
134.55 SF

- 46
- 45
- 44
- 43
- 42
- 41b
- 41
- 41a
- 40
- 39



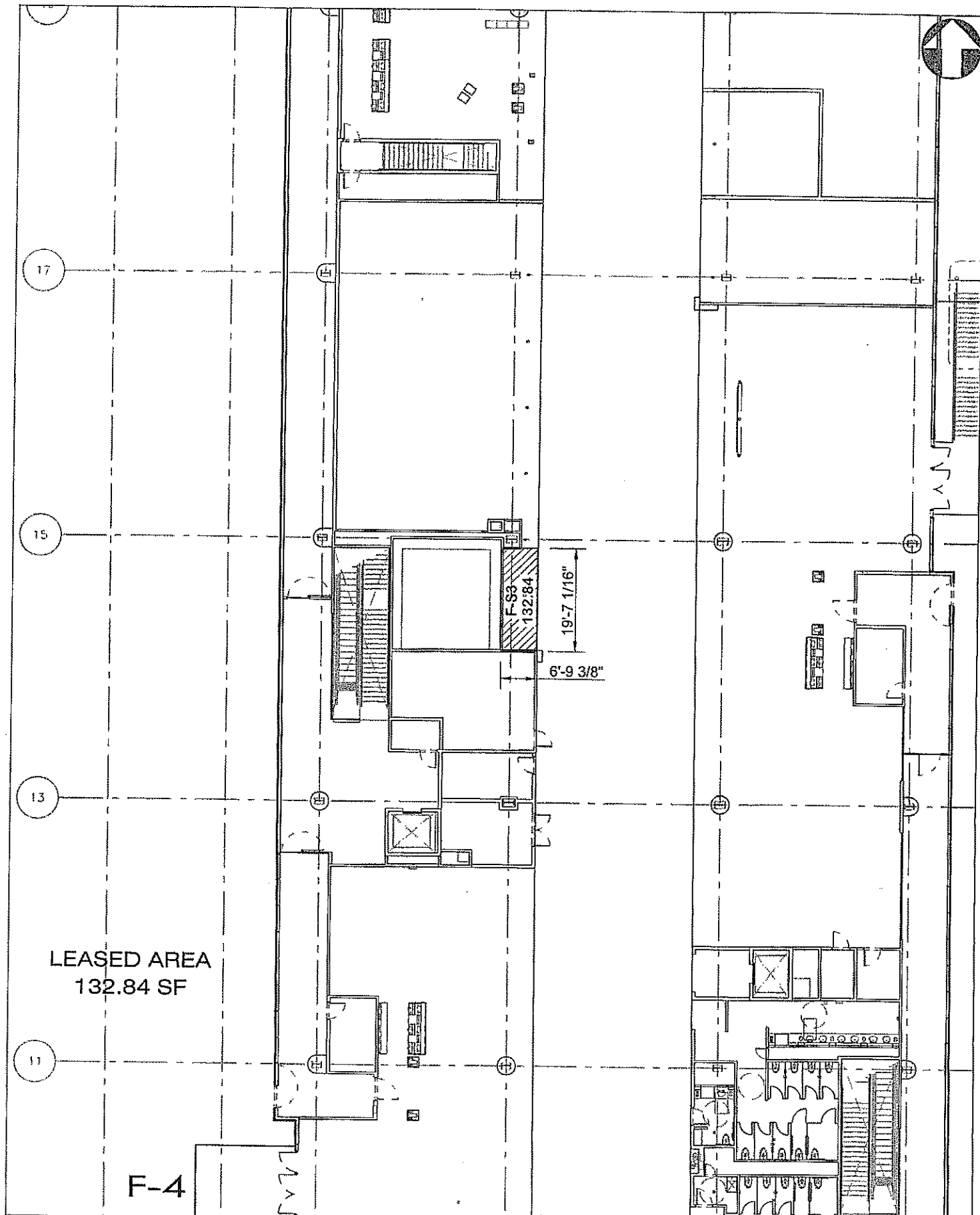
Hartsfield-Jackson  
Atlanta International Airport

TITLE: **VENDING SPACE D-S4**  
H-JAIA LEASE AGREEMENT  
LOCATION: **D CONCURSE - BOARDING LEVEL**

NAME: **EXHIBIT 'A'**

DATE: 7/26/2010  
SHEET: 1 of 1





Hartsfield-Jackson  
Atlanta International Airport

TITLE:

**VENDING SPACE F-S3**

H-JAIA LEASE AGREEMENT

LOCATION:

MHJIT - BOARDING LEVEL

NAME:

**EXHIBIT 'A'**

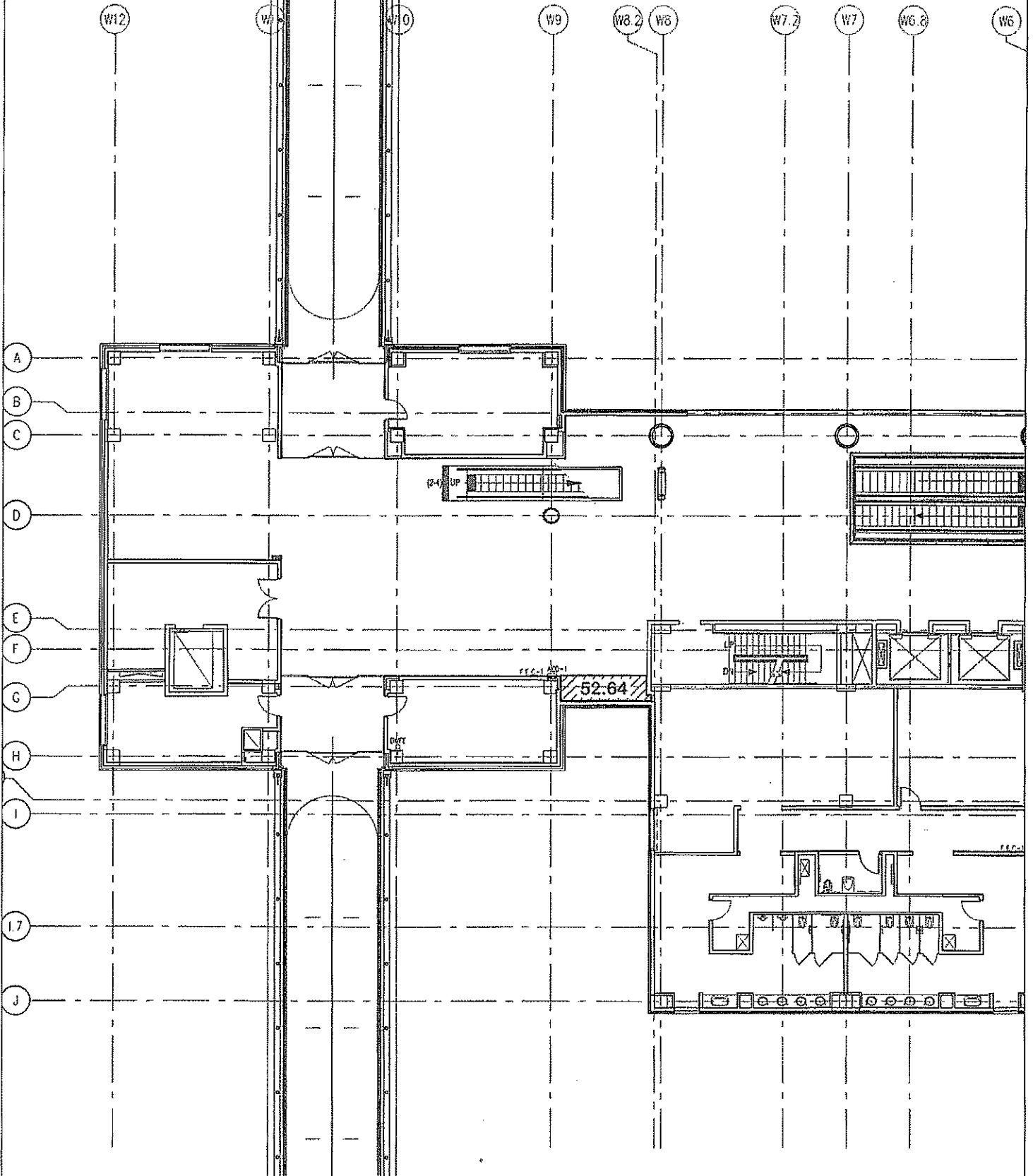
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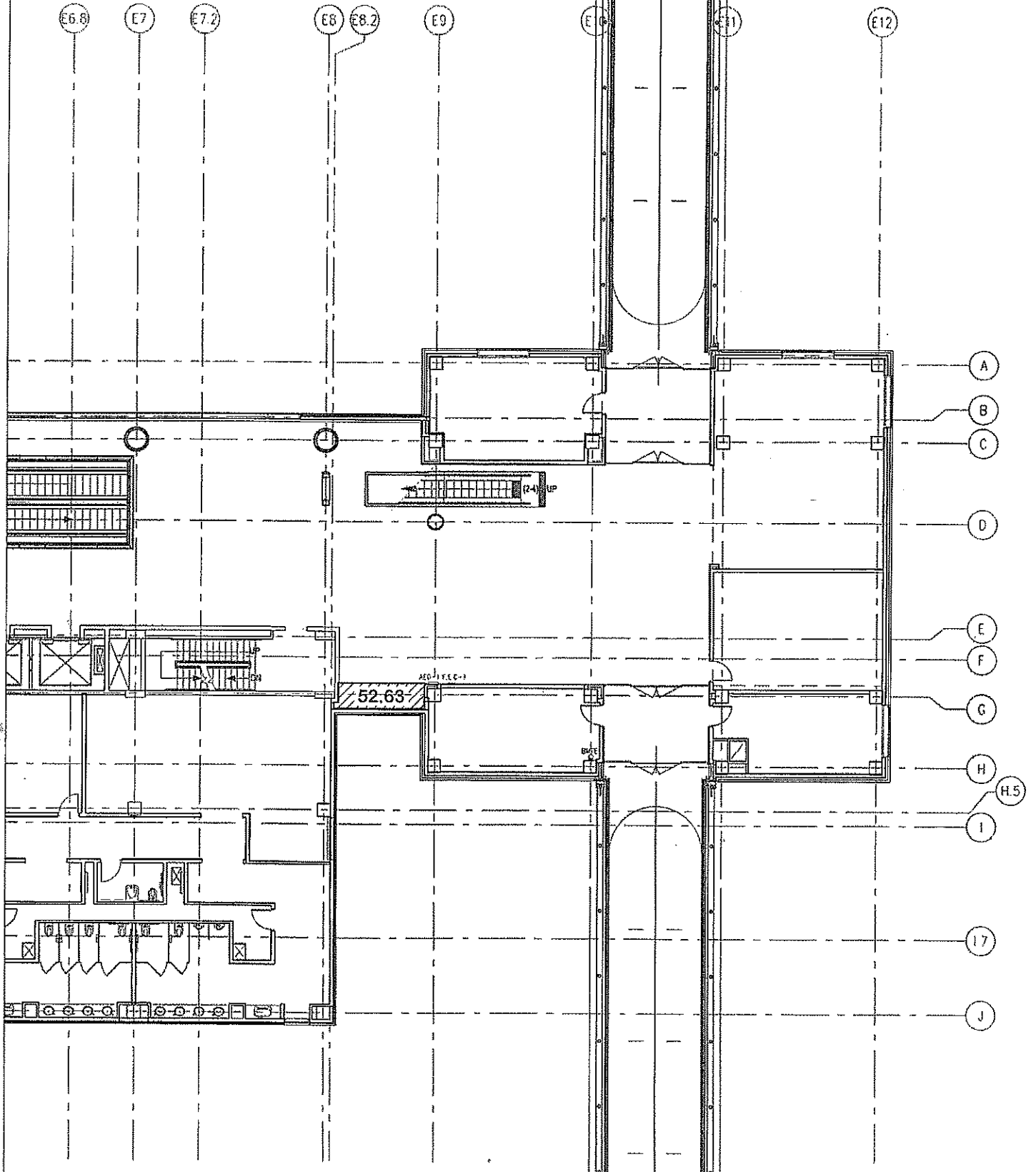
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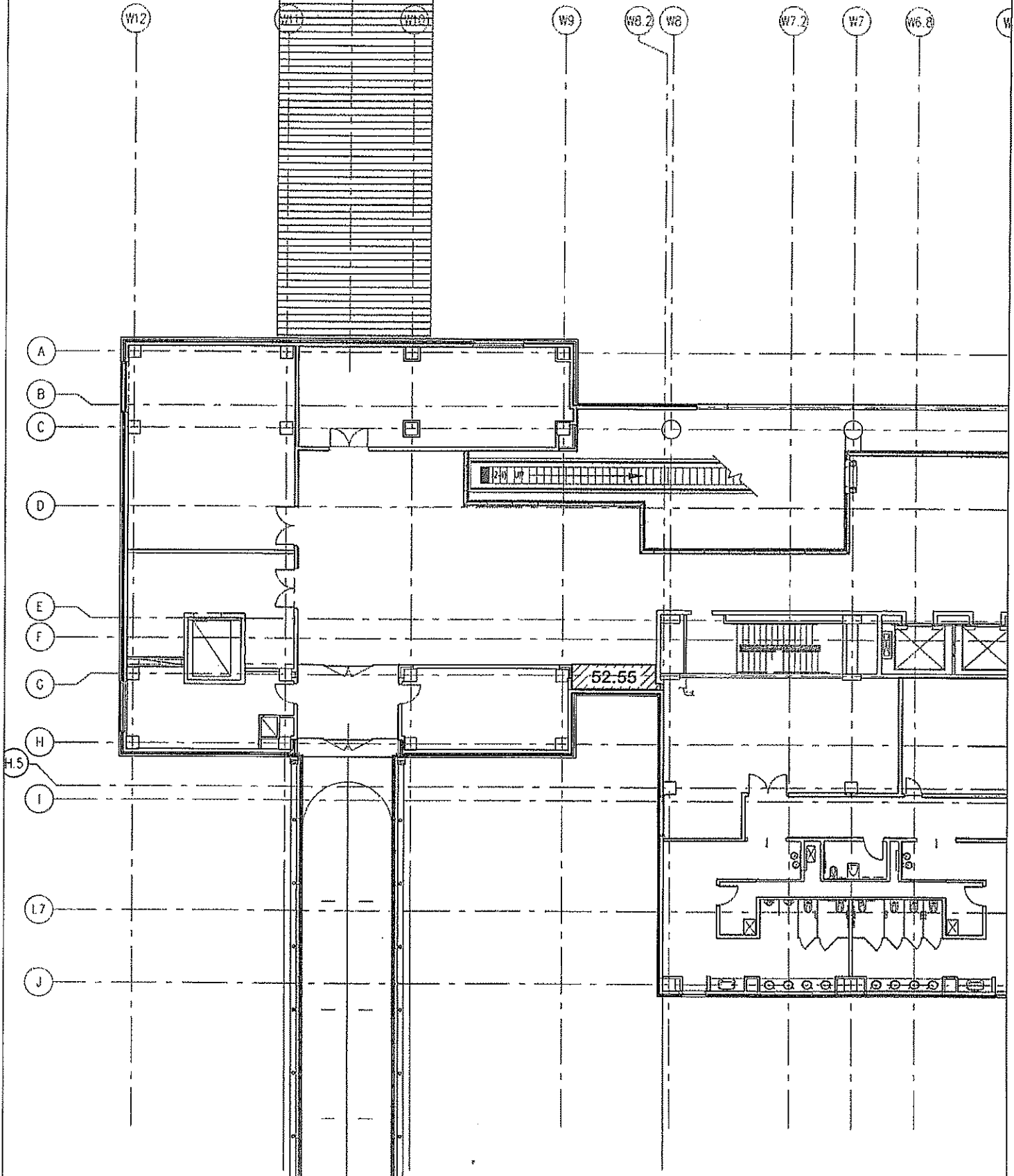
LEASE AREA  
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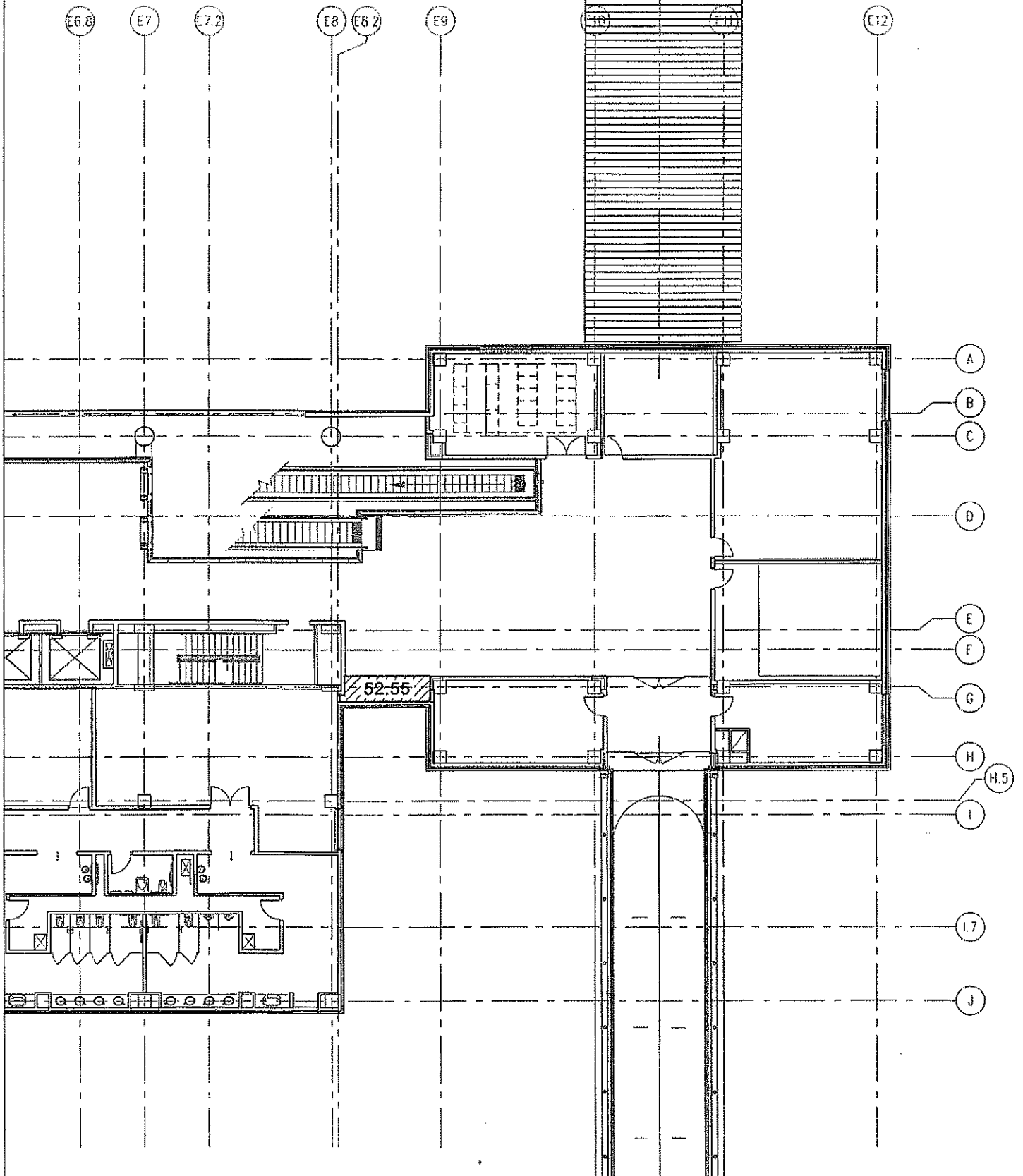
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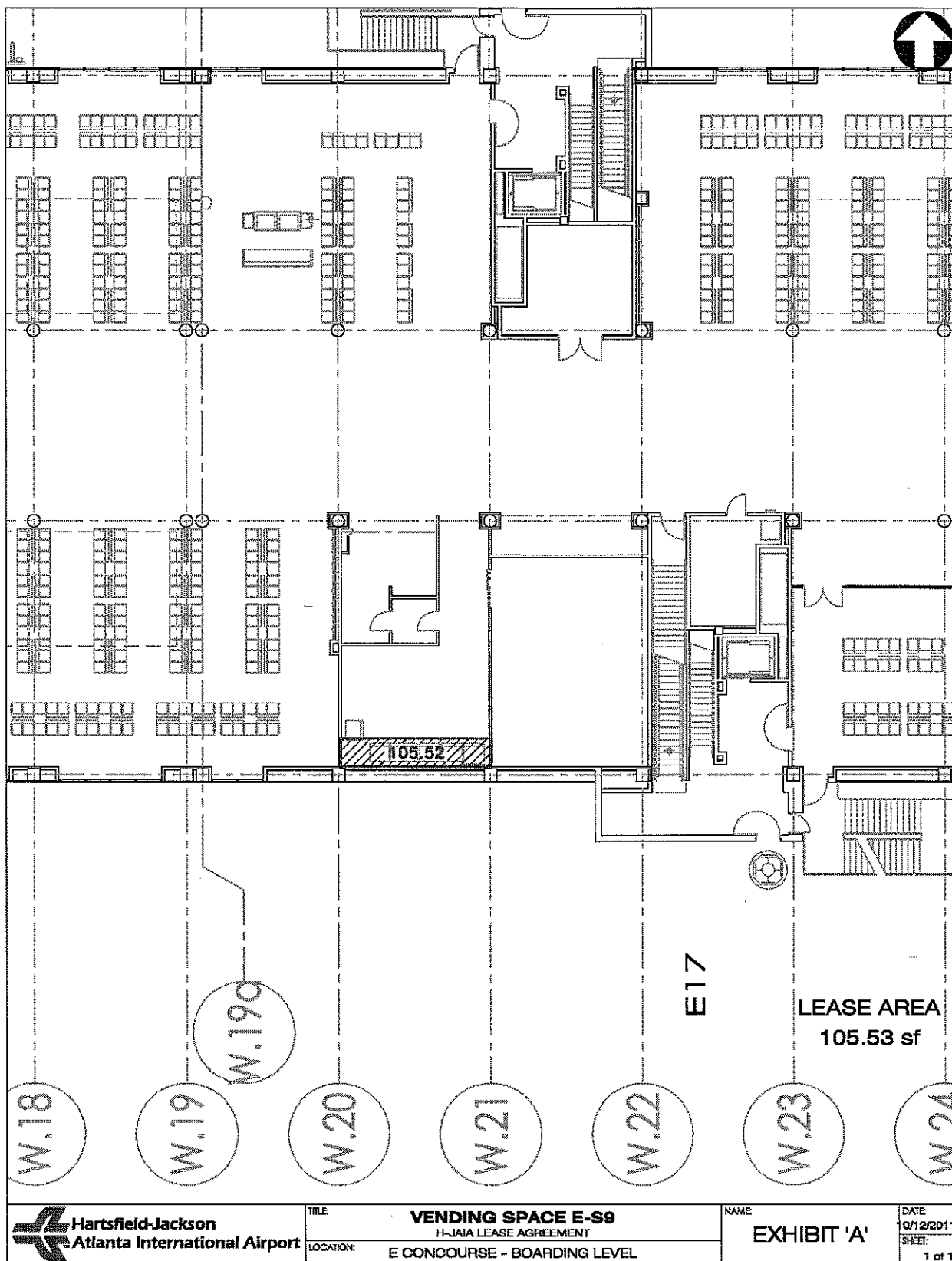


LEASE AREA  
52.55 SF



LEASE AREA  
52.55 SF





**Exhibit B; City Council Resolution**

**Exhibit C; Concessions Compliance/Customer Service Standards/Customer Service Fees/Mandatory Customer Service Classes and Customer Service Training and Fees/Mandatory Customer Service Classes**

TO REVIEW THIS EXHIBIT, GO TO:

[WWW.ATLANTA-AIRPORT.COM](http://WWW.ATLANTA-AIRPORT.COM)

CLICK ON BUSINESS INFORMATION;

CLICK ON: CONCESSIONS BID OPPORTUNITY; AND

CLICK ON: CONCESSIONS COMPLIANCE STANDARD



**Exhibit D; GA Department of Revenue Form RD-1062**

## **Appendix A; Office of Contract Compliance Requirements**



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1700  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6010 Fax: (404) 658-7359  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

OFFICE OF  
CONTRACT COMPLIANCE  
Hubert Owens  
Director  
[howens@atlantaga.gov](mailto:howens@atlantaga.gov)

12/02/2010

**RE: Project No.: FC-5210 - Vending Concession Services (Soft Drink/Bottled Water/Snacks) at Hartsfield-Jackson Atlanta International Airport (RFP)**

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance information is an integral part of every City of Atlanta bid. All Bidders are required to make efforts to demonstrate compliance with the program requirements at or prior to the time of Bid opening, or upon request by OCC. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a City contract and afford all firms, including Small Business Enterprises (SBE) opportunities to participate in the performance of the business of the City to the extent of their availability, capacity and willingness to compete. Please read all of the information very carefully. Pay close attention to the specific SBE goals for this project and the SBE program reminders listed on page 7.

Additionally, as the City of Atlanta is developing its Small Business Enterprise database, bidders will be allowed to submit the names of companies that meet the size standards of the United States Small Business Administration Guidelines. [see 13 C.F.R. § 121.201 (and further explained in 13 C.F.R. §§ 121.104 through 121.107)]. These requirements may be accessed via the internet by visiting: <http://ecfr.gpoaccess.gov/> and choosing "Title 13- Business and Credit" from the browse-able drop down field.

If you have any questions about the information included in this section of the solicitation, please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

**The City of Atlanta looks forward to the opportunity to do business with your company.**

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**CITY OF ATLANTA**  
**SMALL BUSINESS ENTERPRISE**  
**POLICY STATEMENT**

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City must ensure that firms seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of size as it relates to revenue and number of employees. The purpose of the Small Business Enterprise Program is to ensure that the City of Atlanta has a robust race-neutral approach to promoting full and equal business opportunity for all persons doing business with the City of Atlanta, to promote commerce by assisting SBEs to actively participate in the City's procurement process, and ensure that the City of Atlanta utilizes programs that provide it with the best possible resources. SBE Goals for this project are set forth on page 6.

### **Implementation of SBE Policy**

The Office of Contract Compliance will review information submitted by Bidders pertaining to efforts to promote opportunities for small businesses to compete for business as prime contractors, subcontractors and/or Suppliers. A Bidder is eligible for award of a City contract upon a finding by OCC that the Bidder has utilized good faith efforts to attract all businesses regardless of size. To assist prime contractors in this effort, the Office of Contract Compliance has set forth in this solicitation document the SBE goals within the relevant NAICS Codes, for this Project.

For subcontracting, the SBE Project Participation Plan must include all subcontractors to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the City of Atlanta SBE or other acceptable certification number, and supplier id number.

For Suppliers, the Subcontractor Project Plan must include all suppliers to be utilized on the project, the supplies to be provided, including the dollar value of the supplies being provided and the City of Atlanta SBE or other acceptable certification number, and supplier id number

### **Determination of Good Faith Efforts During Bid Process**

No Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the requirement of section 2-1372 on such Eligible Project. Accordingly, each Bidder shall submit with each Bid the following:

1. Covenant of Non Discrimination. Each Bidder shall submit with her/his Bid a Covenant of Non-Discrimination which is set forth herein as Exhibit SBE1.
2. Outreach Efforts Documentation. Each Bidder shall submit with her/his Bid written documentation demonstrating the Bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified SBEs, as subcontractors or Suppliers on the Eligible Project. This information shall be set forth on Exhibit SBE2, which is included herein.
3. SBE Project Participation Plan. Each Bidder shall submit with her/his Bid a completed and signed SBE Project Participation Plan, which is included herein as Exhibit SBE3, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used during the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, certification number of each business, and any other information requested by the Office of Contract Compliance. In order for the Office of Contract Compliance to officially consider a firm to be an SBE firm, it must be certified by or have a certification application pending with the Office of Contract Compliance at the time of the Bid.

### OCC Review of Bidder Submissions

The Office of Contract Compliance shall determine whether a Bidder has satisfied the good faith efforts requirement of section 2-1372 based on its review of the Covenant of Non Discrimination, the Outreach Efforts Documentation, the SBE Project Participation Plan, and its review of other relevant facts and circumstances. In reviewing the documents submitted by a Bidder to determine whether the Bidder has satisfied the good faith outreach practices requirement of this section, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified SBEs, whether such businesses perform Commercially Useful Functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified SBEs within the relevant NAICS Codes for such Eligible Project.

To determine whether a competitor that has failed to meet SBE goals may be awarded the contract, the city will determine whether the efforts the bidder made to obtain SBE participation were "good faith efforts." Efforts that are merely pro forma are not "good faith efforts" to meet the goals. In order to award a contract to a bidder that has failed to meet SBE contract goals, the Office of Contract Compliance will determine whether the bidder actively and aggressively made efforts to meet the City's SBE goals. A bidder making a good faith effort would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a bidder's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable. In determining whether a bidder has made good faith efforts, the Office of Contract Compliance will take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the Office of Contract Compliance may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average SBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. Competitors that fail to meet SBE goals and fail to demonstrate "good faith efforts" shall be deemed non-responsive to the city's SBE requirements and shall not be eligible to be awarded the contract.

### **Small Business Enterprise Program Bid/RFP Submittals**

The Covenant of Non Discrimination, the Outreach Efforts Documentation, the SBE Project Participation Plan, and any other information required by OCC in the solicitation document must be completed in their entirety by each Proponent and submitted with the other required Bid/RFP documents in order for the Bid/RFP to be considered responsive. Failure to timely submit these forms, fully completed, will result in the Bid/RFP being considered as non-responsive, and therefore, excluded from consideration.

### **Monitoring Of SBE Policy**

Upon execution of a contract with the City of Atlanta, the successful bidder's SBE Project Participation Plan will become a part of the contract between the bidder and the City of Atlanta. The SBE Project Participation Plan will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific information on a monthly basis that demonstrates the use of subcontractors and suppliers as indicated on the SBE Project Participation Plan. The failure of the successful bidder to provide the specific information by the specified date each month shall be sufficient cause for the City to evoke penalties as set forth in the City of Atlanta Code of Ordinances, Section 2-1373.

### **Implementation of EEO Policy**

The City effectuates its EEO policy by adopting racial and gender work force availability for every contractor performing work for the City of Atlanta. These percentages are derived from the work force demographics set forth in the 2000 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

### **Monitoring of EEO Policy**

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.



### **First Source Jobs Program Policy Statement**

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta, whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact:

**Deborah Lum  
Manager, One Stop Services  
First Source Jobs Program  
Atlanta Workforce Development Agency  
818 Pollard Boulevard  
Atlanta, GA 30315  
(404) 658-6312**

**Small Business Enterprise Goals for this Project**

**Project No.: FC-5210 - Vending Concession Services (Soft Drink/Bottled Water/Snacks) at  
Hartsfield-Jackson Atlanta International Airport (RFP)**

The Small Business Enterprise goals for the trade categories listed in this project are:

**35.0% SBE**

Please be reminded that no Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the good faith efforts requirement of section 2-1372 on such Eligible Project. Details of the OCC review process for determination of non-discrimination are detailed on pages 2 and 3 of this document.

### **Small Business Enterprise Program Reminders**

1. **Subcontractor Certification.** It is the prime contractor's responsibility to verify that SBEs included on their SBE Project Participation Plans are certified with the City of Atlanta's Office of Contract Compliance by filing with OCC a self-certification form or a letter or other documentation from the United States Small Business Administration that establishes that the firm qualifies as an 8(a) firm or HUBZone firm.
2. **Reporting.** The successful bidder must submit monthly SBE participation reports to the Office of Contract Compliance.
3. **Subcontractor Contact Form.** It is required that bidders list and submit information on all subcontractors they solicit for quotes, all subcontractors who contact them with regard to the project, and all subcontractors they have discussions with regarding the project. Failure to provide complete information on this form will result in your bid being declared non-responsive.
4. **SBE Ordinance.** The SBE Program is governed by the provisions of the SBE Ordinance set forth in the City of Atlanta Code Division 9 section 2 - 1356 through 2 -1377. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.
5. **Supplier Participation.** In order to receive full SBE credit, suppliers must manufacture or warehouse the materials, supplies, or equipment being supplied for use on the Eligible Project.

**COVENANT OF NON-DISCRIMINATION**

The undersigned understands that it is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City of Atlanta. The undersigned covenants that we have not discriminated, on the basis of a firm's revenue or employee size with regard to prime contracting, subcontracting or partnering opportunities. The undersigned further covenants that we have completed truthfully and fully the required forms SBE-2 and SBE-3. Set forth below is the signature of an officer of the bidding entity with the authority to bind the entity.

\_\_\_\_\_  
Signature of Attesting Party

\_\_\_\_\_  
Title of Attesting Party

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, the person who signed the above covenant in my presence.

\_\_\_\_\_  
Notary Public

Seal

**FORM SBE-1**



List all subcontractors or suppliers(SBE and Non-SBE) that were contacted regarding this project

**FORM SBE-2 (Page 1 of 2)**



# **EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN** **SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all subcontractors/suppliers, including lower tiers, to be used on this project.

| Name of Sub-contractor/Supplier | City of Atlanta Supplier ID Number | Company Name, Address and Phone Number | City Of Atlanta Business License? (yes or no) | NAICS Code(s) | Type of Work to be Performed | Is Business a Small Business Enterprise? (yes or no) | Certificati on No. and Expiration Date | Dollar (\$ Value of Work & Scope of Work | Percentage of Total Bid Amount |
|---------------------------------|------------------------------------|--|---|---------------|------------------------------|--|--|--|--------------------------------|
|                                 |                                    |  |   |               |                              |  |  |  |                                |
|                                 |                                    |  |   |               |                              |  |  |  |                                |
|                                 |                                    |  |   |               |                              |  |  |  |                                |
|                                 |                                    |  |   |               |                              |  |  |  |                                |
|                                 |                                    |  |   |               |                              |  |  |  |                                |
|                                 |                                    |  |   |               |                              |  |  |  |                                |
|                                 |                                    |  |   |               |                              |  |  |  |                                |

Total SBE% \_\_\_\_\_  
Total Subcontractor % \_\_\_\_\_

Proponent's Co. Name: \_\_\_\_\_ Date: \_\_\_\_\_ FC#: \_\_\_\_\_  
Proponent's Contact Number: \_\_\_\_\_ Project Name: \_\_\_\_\_  
Signature: \_\_\_\_\_

**First Source Job Information**

Company Name: \_\_\_\_\_

FC No.: \_\_\_\_\_

Project Name: \_\_\_\_\_

The following entry level positions will become available as a result of the above referenced contract with the City of Atlanta.

- 1.
- 2.
- 3.
- 4.
- 5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: \_\_\_\_\_

Phone Number: \_\_\_\_\_

FORM 4



### First Source Jobs Agreement

**THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by \_\_\_\_\_**

**This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.**

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

\_\_\_\_\_  
Contractor

FORM 5

## **Appendix B; Insurance and Bonding Requirements**

**APPENDIX B  
INSURANCE & BONDING REQUIREMENTS  
FC-5210**

**Vending Concession Services (Soft Drink/Bottled Water/Snacks) at  
Hartsfield-Jackson Atlanta International Airport**

**A. Preamble**

The following requirements apply to all work under the agreement. Compliance is required by all Proponents. **To the extent permitted by applicable law, the City of Atlanta ("City") reserves the right to adjust or waive any insurance or bonding requirements contained in this Appendix B and applicable to the agreement.**

**1. Evidence of Insurance Required Before Work Begins**

No work under the agreement may be commenced until all insurance and bonding requirements contained in this Appendix B, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City. Proponent must provide City with a Certificate of Insurance that clearly and unconditionally indicates that Proponent has complied with all insurance and bonding requirements set forth in this Appendix B and applicable to the agreement. If the Proponent is a joint venture, the insurance certificate should name the joint venture, rather than the joint venture partners individually, as the primary insured. In accordance with the solicitation documents applicable to the agreement at the time Proponent submits to City its executed agreement, Proponent must satisfy all insurance and bonding requirements required by this Appendix B and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Proponent does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the agreement or under applicable law, make a claim against any bid security provided by Proponent.

**2. Minimum Financial Security Requirements**

All companies providing insurance required by this Appendix B must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the documentation provided by Proponent to City certifying that all insurance and bonding requirements set forth in this Appendix B and applicable to the agreement have been unconditionally satisfied.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's Rating not less than A-,
- ii) Best's Financial Size Category not less than Class IX, and

- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.
- iv) All bid, performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Proponent in writing. Proponent must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Proponent's failure to comply with all insurance and bonding requirements set forth in this Appendix B and applicable to the agreement will not relieve Proponent from any liability under the agreement. Proponent's obligations to comply with all insurance and bonding requirements set forth in Appendix B and applicable to the agreement will not be construed to conflict with or limit Proponent's indemnification obligations under the agreement.

3. Insurance Required for Duration of Contract

All insurance and bonds required by this Appendix B must be maintained during the entire term of the agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

4. Notices of Cancellation & Renewal

Proponent must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement and Appendix B that concern the proposed cancellation, or termination of coverage.

68 Mitchell St. Suite 9100  
Atlanta, GA 30303  
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Proponent shall provide the City with evidence of required insurance prior to the commencement of this agreement, and, thereafter, with a certificate evidencing renewals or changes to required policies of insurance at least fifteen (15) days prior to the expiration of previously provided certificates.

5. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this contract shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to

execute the Acord Certificates of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies; these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

6. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Risk Management at 68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303.**

7. Project Number & Name

The project number and name must be referenced in the description section of the insurance certificate.

8. Additional Insured Endorsements

The City must be covered as Additional Insured under all insurance (except worker's compensation and professional liability) required by this Appendix B and such insurance must be primary with respect to the Additional Insured. Additional Insured language must read **"In compliance with the contract requirements, certificate holder is an additional insured under the policy."** Confirmation of this must unconditionally appear on any **Certificate of Insurance** provided by Proponent as evidence of its compliance with this Appendix B. **Proponent must also submit to City an Additional Insured Endorsement evidencing City's rights as an Additional Insured for each policy of insurance under which it is required to be an additional insured pursuant to this Appendix B. Endorsement must not exclude the Additional Insured from Products - Completed Operations coverage. The City shall not have liability for any premiums charged for such coverage.**

9. Mandatory Sub-Contractor/Consultant Compliance

Proponent must require and ensure that all subContractor/Consultants/subconsultants at all tiers to be sufficiently insured/bonded.

10. Self Insured Retentions, Deductibles or Similar Obligations

Any self insured retention, deductible or similar obligation will be the sole responsibility of the Proponent.

B. Workers' Compensation and Employer's Liability Insurance

Proponent must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the agreement. :

Workers' Compensation. . . . . **Statutory**

Employer's Liability:

|                                   |                                |
|-----------------------------------|--------------------------------|
| Bodily Injury by Accident/Disease | <b>\$500,000 each accident</b> |
| Bodily Injury by Accident/Disease | <b>\$500,000 each employee</b> |
| Bodily Injury by Accident/Disease | <b>\$500,000 policy limit</b>  |

C. Commercial General Liability Insurance

Proponent must procure and maintain Commercial General Liability Insurance on form (CG 00 00 01 or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- ☒ Contractual Liability
- ☒ Broad Form Property Damage
- ☒ Premises Operations
- ☒ Personal Injury
- ☒ Advertising Injury
- ☒ Fire Legal Liability
- ☒ Medical Expense
- ☒ Independent Contractor/Consultants/SubContractor/Consultants
- ☒ Products – Completed Operations
- ☒ Additional Insured Endorsement\* (primary & non-contributing in favor of the City of Atlanta)
- ☒ Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Proponent must procure and maintain Automobile Liability Insurance in an amount not less than **\$500,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- ☒ Owned, Non-owned & Hired Vehicles
- ☒ Waiver of Subrogation in favor of the City of Atlanta

If Proponent does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Proponent's personal automobile policy or the Commercial General Liability coverage required under this Appendix B.

In addition and in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **ten million (\$10,000,000)** combined single limit for personal injury and property

damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Crime Policy

The Proponent shall procure and maintain a Crime Policy covering all persons receiving or disbursing funds under this contract. The policy shall be in an amount not less than \$250,000 and shall be specifically endorsed to cover loss under this contract and shall name the City of Atlanta as Loss Payee.

F. Property Coverage/Inland Marine

Proponent shall procure and maintain all risk property coverage in an amount equal to replacement value for all equipment, furniture, fixtures, machinery and/ or personal property.

G. Performance and Payment Bonds

Proponent must, within thirty (30) days of the Commencement Date, at its own expense, deliver to the Aviation General Manager a Performance and a Payment Bond each in an amount equal to twelve (12) months of the then current total Minimum Annual Guarantee under this Agreement payable to the City, naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney, which surety bond or bonds must be renewed annually, at the then current total Minimum Annual Guarantee. The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Proponent may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

1. In addition, prior to the commencement of any construction work by or at the instance of Proponent within the Premises, it must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Proponent shall provide to the City, a Payment Bond in an amount equal to 100% of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Payment Bond shall name the City as the Obligatee, shall meet the other requirements of the Agreement, and shall remain in full force and effect until: (i) all Proponent Improvements are completely and fully paid for, (ii) certificates of occupancy have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Proponent Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Payment Bond has lapsed.

2. The bonds must be issued as security for the faithful performance of this Agreement, including, maintenance and guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.

3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.

4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.

5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.



**Appendix C; Illegal Immigration Reform and Enforcement Act**  
**Forms**

## **Appendix C; Illegal Immigration Reform and Enforcement Act Forms**

### **INSTRUCTIONS TO PROPONENTS:**

All Proponents must comply with the Illegal Immigration Reform and Enforcement Act, O.G.G.A § 13-10-90, et seq. (IIREA). IIREA was formerly known as the Georgia Security and Immigration Compliance Act or GSICA. Proponents must familiarize themselves with IIREA and are solely responsible for ensuring compliance. Proponents must not rely on these instructions for that purpose. They are offered only as a convenience to assist Proponents in complying with the requirements of the City's procurement process and the terms of this RFP.

1. The attached Contractor Affidavit must be filled out COMPLETELY and submitted with the proposal prior to proposal due date.
2. The Contractor Affidavit must contain an active Federal Work Authorization Program (E-Verify) User ID Number and Date of Registration.
3. Where the business structure of a Proponent is such that Proponent is required to obtain an Employer Identification Number (EIN) from the Internal Revenue Service, Proponent must complete the Contractor Affidavit on behalf of, and provide a Federal Work Authorization User ID Number issued to, the Proponent itself. Where the business structure of a Proponent does not require it to obtain an EIN, each entity comprising Proponent must submit a separate Contractor Affidavit.

**Example 1**, ABC, Inc. and XYZ, Inc. form and submit a proposal as Airport Food, LLC. Airport Food, LLC must enroll in the E-verify program and submit a single Contractor Affidavit in the name of Airport Food, LLC which includes the Federal Work Authorization User ID Number issued to Airport Food, LLC.

**Example 2**, ABC, Inc. and XYZ, Inc. execute a joint venture agreement and submit a Proposal under the name Airport Food, JV. If, based on the nature of the JV agreement, Airport Food, JV is not required to obtain an Employer Identification Number from the IRS. The Proposal submitted by Airport Food, JV must include both a Contractor Affidavit for ABC, Inc. and a Contractor Affidavit for XYZ, Inc.

4. All Contractor Affidavits must be executed by an authorized representative of the entity named in the Affidavit.
5. All Contractor Affidavits must be duly notarized.
6. All Contractor Affidavits must be submitted attached to the front outside cover of proposal Volume 1.
7. Subcontractor and sub-subcontractor affidavits are not required at the time of proposal submission, but will be required at contract execution or in accordance with the timelines set forth in IIREA.

**Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

Name of Contractor: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Public Employer: City of Atlanta

**I hereby declare under penalty of perjury that the forgoing is true and correct.**

Executed on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE  
ME ON THIS THE \_\_\_\_, DAY OF \_\_\_\_\_, 201\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor)) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

Name of Subcontractor: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Public Employer: City of Atlanta

**I hereby declare under penalty of perjury that the forgoing is true and correct.**

Executed on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE  
ME ON THIS THE \_\_\_\_, DAY OF \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**Sub-subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(4)**

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for (\_\_\_\_\_) (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract)) and (\_\_\_\_\_) (name of contractor)) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. §13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to (\_\_\_\_\_) (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract)). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to (\_\_\_\_\_) (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract)). Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

Name of Contractor: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Public Employer: City of Atlanta

**I hereby declare under penalty of perjury that the forgoing is true and correct.**

Executed on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE

ME ON THIS THE \_\_\_\_, DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

## **Appendix D: Construction Safety and Health Plan**

- 1.0 Safety and Health Plan.** City has established this Construction Safety and Health Plan ("Plan") to promote safety and to minimize and control hazards and risks associated with construction projects at the Airport. In this Plan, City's safety representative is \_\_\_\_\_ and any other individual City designates in writing to Concessionaire (collectively, "Safety Representative(s)")
- 2.0 Plan Highlights.** The substance of this Plan addresses:
- 2.1 Periodic inspection by City of Concessionaire's Work, Jobsites and storage areas to assure safe conditions and practices.
  - 2.2 The training of all employees in all Plan requirements.
  - 2.3 Immediate reporting to City's Safety Representative(s) of any death, injury or damage to property at any Jobsite or Work storage area on or off the Airport at which Work is performed.
  - 2.4 Full cooperation in inspections by City's Safety Representative(s) or other governmental or non-governmental agencies exercising jurisdiction over the Work. A copy of any notice or other written documentation received by Concessionaire from any agency must be submitted to the City's Safety Representative(s) immediately upon receipt.
  - 2.5 Use of approved regulatory and City required safety equipment and protection devices, as described in the Plan.
  - 2.6 Immediate correction by Concessionaire of any unsafe conditions or acts by its employees.
  - 2.7 Medical surveillance requirements for personnel exposed to hazardous substances, e.g. radiation badges.
  - 2.8 Safety requirements and procedures for decontamination facilities, e.g. protective clothing and warning signs.
  - 2.9 The use of forms concerning this Plan that City may direct Concessionaire to use.
- 3.0 Pass Down Provisions.** Concessionaire must include the obligations of this Plan in all contracts or other similar documents utilized by it to obtain goods and services concerning this Contract and the Work.

#### **4.0 General. Concessionaire must:**

- 4.1 develop a Site-Specific Safety Plan that addresses all Work activities, i.e. fall exposures, excavations, cranes, etc., including the requirement for a 100% fall protection program for all work performed 6 feet or more above ground or finished floor level, operating criteria for motorized equipment and an emergency and evacuation plan.
- 4.2 This Site-Specific Safety Plan must be submitted to the Safety Representative(s) and reviewed for approval prior to start of the Work. If any Safety Representative(s) determines that the Site-Specific Safety Plan is deficient in any manner, Concessionaire must, prior to commencing any Work, correct such deficiencies upon receipt of notice from the Safety Representative(s).
- 4.3 Provide safety data information to the Safety Representative(s), as required.
- 4.4 Report all accidents and incidents to City's Representative(s) on a State of Georgia First Report of Injury Form. Incident Reports must be submitted on a Supervisor's Incident Report Form. Only City-approved forms will be accepted for reporting accidents or incidents.
- 4.5 Provide weekly man-hour reports to the Safety Representative(s) on the Monday following the end of each Work week.

#### **5.0 Concessionaire's Safety Manager. Concessionaire must appoint a Safety Manager during the period when Work is performed. Concessionaire's Safety Manager must perform daily safety inspections of all Jobsites to eliminate unsafe acts and/or conditions and ensure compliance with the Contract. Concessionaire's Safety Manager must also perform the following:**

- 5.1 Assist in investigating all accidents and implementing immediate corrective actions.
- 5.2 Control the availability and use of necessary safety equipment, including personal protective for all employees.
- 5.3 Cooperate with Safety Managers of other contractors, and take necessary steps to promptly implement appropriate safety recommendations.
- 5.4 Attend safety meetings.

#### **6.0 Miscellaneous Safety Requirements.**

- 6.1 **Safe Operations.** Concessionaire must conduct all operations under this Contract to avoid the risk of health endangerment health, bodily harm to

individuals and damage to property. Concessionaire must continually and diligently inspect all equipment, materials and Work to discover any conditions that might involve such risks and correct those conditions.

6.2 **Safety Orders.** Concessionaire must have copies of appropriate Federal, State and Local Safety Regulations at all Jobsites available for employees to review.

6.3 **General Safety Provisions.** Concessionaire must protect the health and safety of employees, the public and other persons, prevent damage to property, materials, supplies and equipment and avoid interrupting the normal operation of the Airport.

6.4 **Fire Protection.** Concessionaire must establish a Fire Prevention Plan incorporating, as a minimum, OSHA and NFPA standards. Only approved safety cans may be used for flammable and combustible liquids. "No Smoking Or Open Flame" signs and fire extinguishers must be provided where required or as directed by City. Approved safety cans must be metal with flash arresters and spring-loaded tops.

6.5 **Scaffolding:** Concessionaire must:

6.5.1 Ensure that all employees working on, erecting, dismantling or modifying any scaffolding are trained by a competent Person and maintain documentation concerning all training at the Project.

6.5.2 Ensure that a complete guardrail system is utilized on scaffolding at all working heights and fall protection plan implemented over six (6) feet.

6.6 **Protection of the Public and Property.** Concessionaire must take all steps necessary to ensure protection of the public and property.

7.0 **Fall Protection Requirements.** These fall protection requirements are mandatory for all trades performing Work on the Project.

7.1 Concessionaire must take all practical measures to eliminate, prevent and control fall hazards. The Project must be surveyed prior to the commencement of any Work to identify all hazards of Personnel falling from elevations. First consideration must be given to the elimination of those hazards. If a fall hazard cannot be practically eliminated, second consideration must be given to implementing effective permanent means of fall protection.

7.2 If a fall hazard cannot be eliminated or fall prevention assured, then effective fall protection means must be planned, implemented and carefully monitored to control the risks of personal injury due to falling. Fall



protection systems must be continuous by design and Concessionaire must control against intermittent or improper use.

- 7.3 All employees who are working where fall hazards cannot be eliminated or falls prevented must be uniformly equipped and trained.
- 7.4 All employees must utilize a full body harness with two (2) shock-absorbing lanyards to allow continuous protection.
- 7.5 Floor or wall openings must be properly barricaded at all times. Floor covers, on openings greater than three feet, may not be used to protect open holes without the additional protection of a complete handrail system.
- 7.6 Guardrail systems consisting of a top rail, mid-rail and toe plate must be installed on perimeter edges or scaffolding.
- 7.7 Personal fall arrest systems such as vertical lifelines, retractable and shock absorbing lanyards, full body harnesses, netting, etc. must be provided in compliance with OSHA CFR 29, 1926, Subpart M, or as directed by City.

**8.0 Eye, Face and Head Protection Policy.** All employees must, at all times, wear American National Standard Institute (ANSI) approved safety glasses with side shields on the Jobsite.

**9.0 Accident Investigation and Reporting.**

- 9.1 All accidents or incidents resulting in personal injury or property damage must be immediately reported verbally to the Safety Representative(s) and followed by a written report within 24 hours of the occurrence.
- 9.2 Emergency Telephone Numbers. Concessionaire must post a list of emergency telephone numbers; to include doctor and ambulance, fire, etc., next to telephones at the Project.
- 9.3 Critical Injuries. City must be notified immediately in the following cases utilizing the Hartsfield Emergency Notification procedures:
  - 9.3.1 Spinal cord injury;
  - 9.3.2 Head trauma;
  - 9.3.3 Amputations;
  - 9.3.4 Fatality;
  - 9.3.5 Severe burns;
  - 9.3.6 Heart attack; and
  - 9.3.7 Hospitalizations.
- 9.4 Concessionaire must secure the affected area immediately after the accident in order to prevent any alteration of the scene before the

investigation. This includes immediately contacting the Safety Representative(s). The area is to be cordoned off and an individual posted by Concessionaire to restrict unauthorized personnel as necessary

- 9.5 Concessionaire shall not make any news releases or statements to the public regarding any matters related to the Project.
- 9.6 Witness Statements. Concessionaire must assist the City in obtaining witness statements when there has been an accident<sup>6</sup>. All statements are to be recorded and then typed. The witness must sign and date the statement after it is typed.
- 9.7 The Incident/Accident Report form must be filed within twenty-four (24) hours of the occurrence.
- 9.8 Appropriate drug screening must be conducted after the incident or accident.

**10.0 Fire Prevention Program.** A Fire Prevention Program must be submitted in writing to City for review and coordination with other Jobsite activities prior to commencing Work. Such program must include:

- 10.1 Restriction of burning to designated areas. No unauthorized fires shall be permitted on Jobsite.
  - 10.2 Assignment of fire watches, trained and equipped to prevent or control fires, for all welding and burning operations. Fires should be monitored for three hours after the burning.
  - 10.3 Proper identification, storing, handling and use of flammable Material to prevent accidental ignition.
  - 10.4 Adequate fire extinguishing equipment appropriate for the operations being performed must be provided and employees must be trained in the maintenance and use of such equipment.
  - 10.5 Evacuation procedures and fire drills as required by City.
-

**Appendix E; Maynard H. Jackson, Jr. International Terminal (Concourse F); Concessions Construction Coordination**

## **Appendix E; Maynard H. Jackson, Jr. International Terminal (“Concourse F”); Concessions Construction Coordination**

The following details will apply to Concessionaire Improvements performed by Concessionaire and/or its subcontractors, etc. (collectively, “Concessionaire”):

### **1. Anticipated Concourse F Turnover Schedule:**

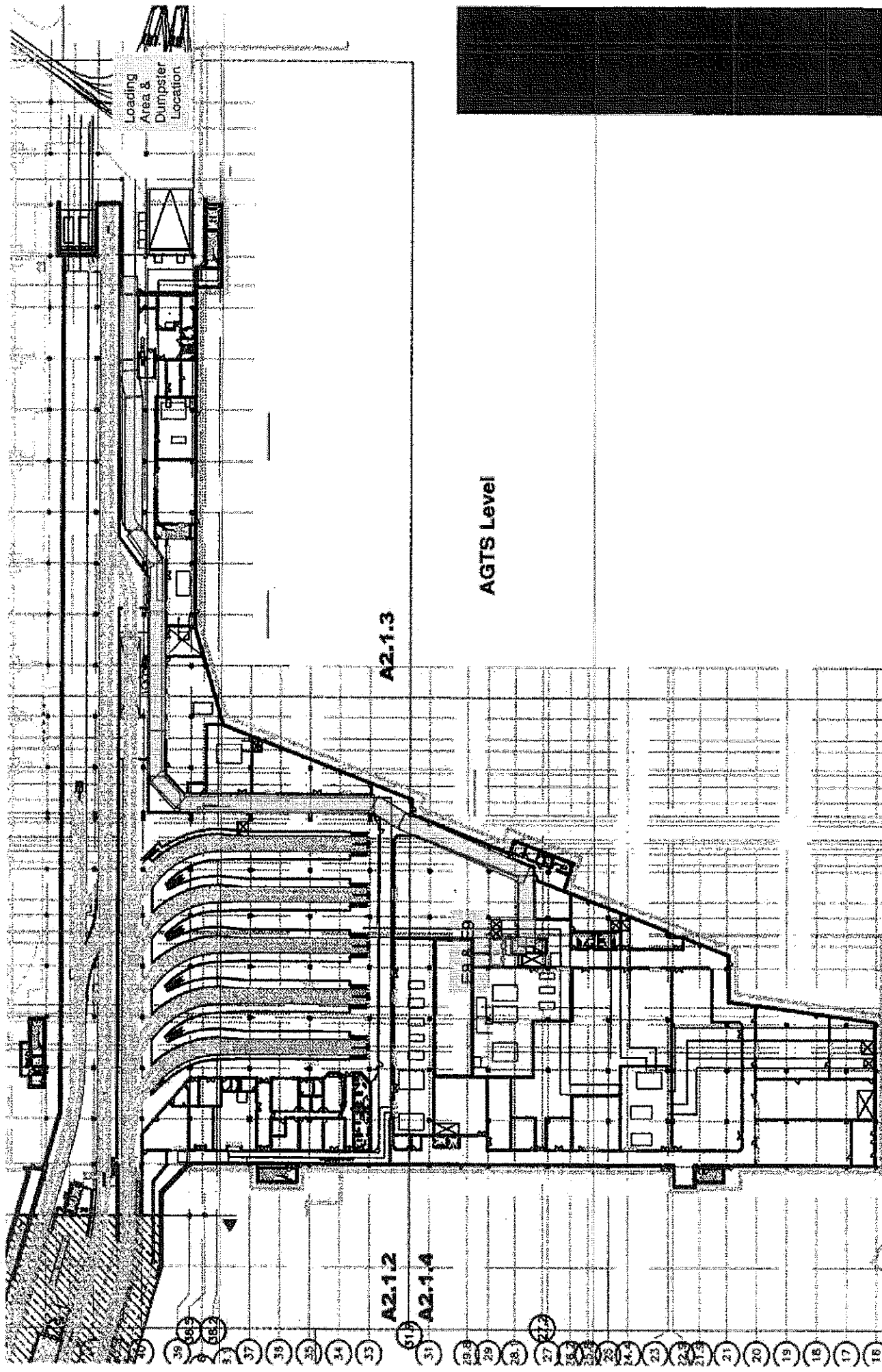
- 1.1. Club Level T– upon final execution of Concessions Agreement; and
- 1.2. Arrivals and Departures Levels– upon final execution of Concessions Agreement.

### **2. Access, Site Logistics and Concessionaire Responsibilities:**

- Concourse F Prime Access: All access will be through the Automated Guideway Transit System (“AGTS”) Level Loading Dock Area (“Loading Dock”) depicted on Exhibits SK-1 thru 3 attached;
- Material deliveries to the Loading Dock will need to be coordinated with the Base Terminal Building Contractor (“HMMH”);
- Concessionaire will be provided an area near the Loading Dock for dumpster placement; Concessionaire is responsible for providing its own dumpsters for use in constructing Concessionaire Improvements. Concourse F dumpsters will not be available for use by Concessionaire;
- 8000 Pound capacity Service Elevators (#508 and #509) available for shared use with other Concourse F contractors during normal working hours (7:00 AM to 3:30 PM; M-F). During such shared use times, HMMH qualified elevator operators will provide elevator service. If Concessionaire intends to work during periods other than normal working hours when HMMH’s qualified elevator operators are available, Concessionaire must provide, at its own cost, its own qualified elevator operators to operate Service Elevator #’s 508 and 509;
- Concessionaire is responsible for providing, at its own costs, its own Sanitary Facilities. Temporary toilets must be located in the same area of the Loading Dock designated for the Dumpsters. Concourse F restroom facilities will not be available for Concessionaire’s use;
- Concessionaire must provide all temporary enclosures, protection, dust containment, etc., as required, around the perimeter of the concession work areas to protect existing Concourse F finishes and operating MEP systems from damage or contamination and, as may be required, to maintain LEED Certification requirements throughout Concourse F;
- Concessionaire must protect all existing finishes along path from work area through Concourse F;

- Concessionaire must coordinate with HMMH any Work not directly within the Concourse F Premises but that is necessary for Concessionaire to complete the Concessionaire Improvements. Concessionaire must return all areas in Concourse F in which Work is done outside of the Premises to the condition they were prior to Concessionaire's Work;
- Concessionaire must perform all surveying, field dimensioning, slab x-ray of all structural penetrations and layout that is required to complete the Concessionaire Improvements;
- Concourse F MEP systems will be provided only as identified on the Concourse F HMMH Contract Documents. All other provisions, systems, penetrations, supports or other items required by Concessionaire to complete the Concessionaire Improvements must be provided by Concessionaire;
- Concessionaire may not store materials outside of the Premises where it is installing the Concessionaire Improvements; all Concessionaire materials must be stored in the Premises where the Concessionaire Improvements are being installed;
- All Concessionaire workers must park offsite in the MHJIT subcontractor employee parking lot, with bussing to be provided by Concessionaire, at its own cost. There is very limited onsite parking for Concessionaire's supervisory personnel. Concessionaire must coordinate use of such onsite parking with HMMH;
- Concessionaire is responsible, at its own cost, for providing temporary power during the installation of the Concessionaire Improvements;
- Concessionaire must, at its own cost, replace all finishes damaged or removed to facilitate MEP/Special Systems or any other Work scope that occurs outside of the Premises where the Concessionaire Improvements are installed;
- All personnel must have an employee photo ID displayed on the outermost garment, waist high or above. The employee badge must contain the employee's name, Contractor's name and project number or name. Once Concourse F becomes a Security Identification Display Area ("SIDA"), all escorted personnel must remain under the control of person(s) with an ATL SIDA badge at all times while in the SIDA; and
- Exhibits: Exhibits SK-1 through SK-3 are attached for Concessionaire's reference.

**Exhibits SK-1, SK-2 & SK-3 to Appendix E**



AGTS Level

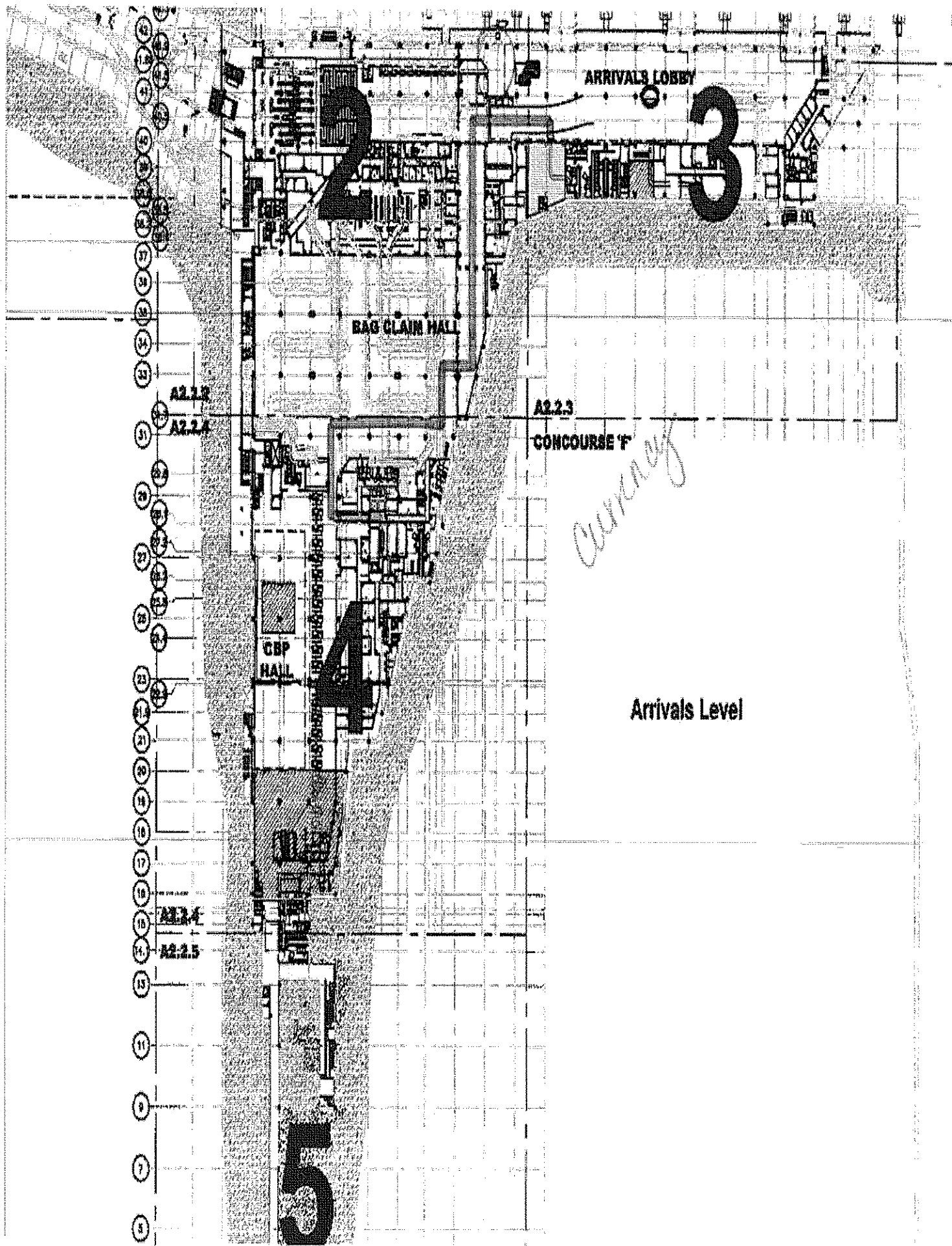
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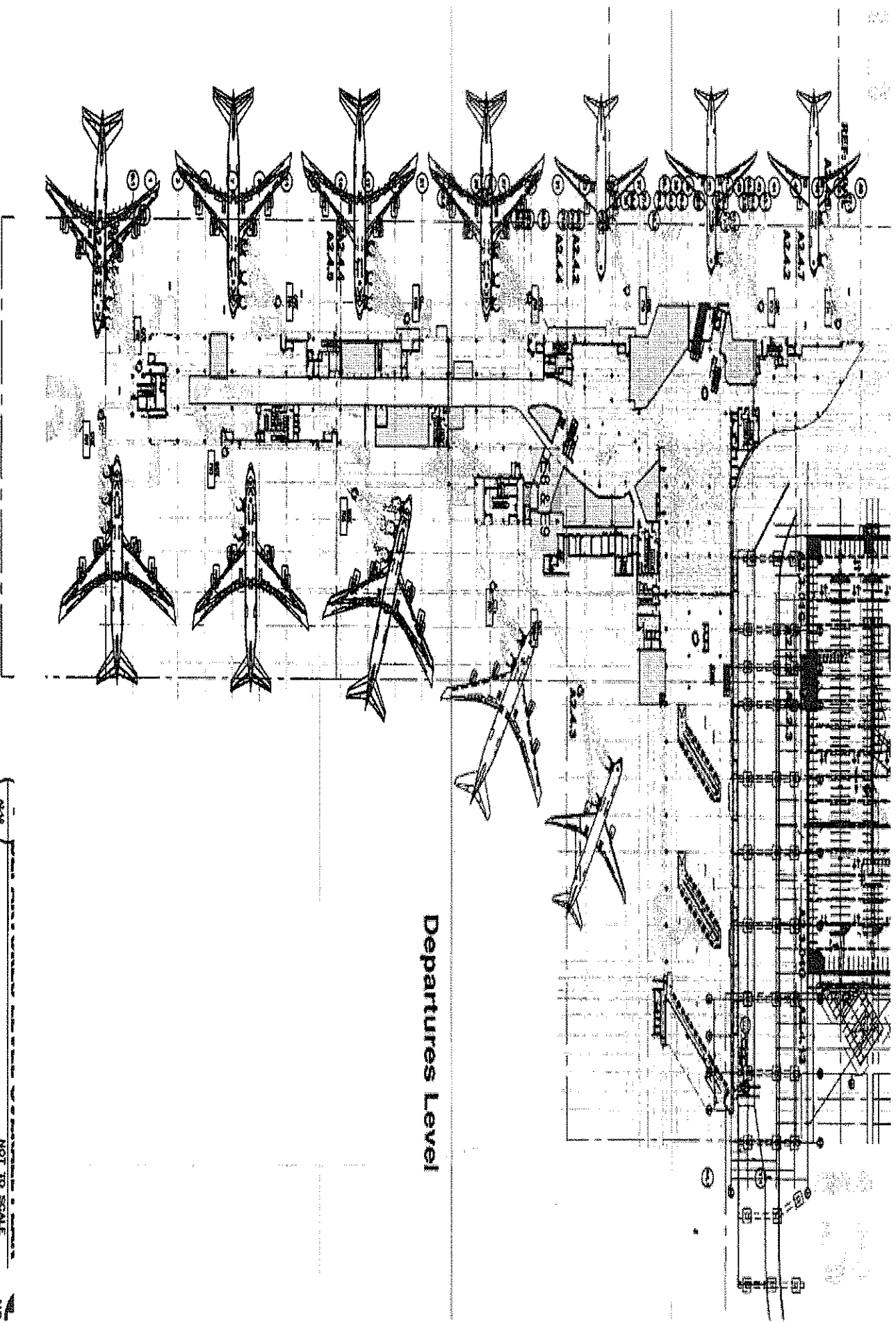
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Loading  
Area &  
Dumpster  
Location



Arrivals Level





Departures Level

**APPENDIX F ADDITIONAL CONTRACT DOCUMENTS**